

## \* CORRESPONDENCE

RESPECTING THE

## ALASKA BOUNDARY

No. 1.

*The Marquess of Salisbury to Mr. Choate.*

FOREIGN OFFICE, JULY 1, 1899.

YOUR EXCELLENCY,—The correspondence which has passed between the United States' government and that of Her Majesty, as well as the negotiations and other diplomatic intercourse which have taken place both here and at Washington, have left on the minds of Her Majesty's ministers a strong impression that no effective progress will be made in coming to an agreement upon the subjects which divide the two countries without the assistance of arbitration. This appears to be especially the case with respect to the Alaska boundary. The different signification which the two governments attach to the language of the Treaty of 1825 is not of a character which appears likely to be adjusted by the method of explanation or argument on the two sides. Some of the ablest men belonging to both nations have now for several months devoted the utmost erudition and acumen to this discussion, but the attainment of an agreement seems to be no nearer than when the communications began. Her Majesty's government feel that no satisfactory agreement between the two countries can be arrived at until the difference with respect to the Alaska boundary has been adjusted, and that this adjustment can only be attained by the process of arbitration.

Much, of course, will depend upon the manner in which the subject of controversy is presented to the tribunal selected for arbitration, and upon the conditions by which the arbitrator's decisions are shaped and limited. Upon this matter some preliminary discussion has already taken place between the two governments, but no formal expression of opinion on either side in this respect has as yet been arrived at. In order to ascertain whether any formal difference exists between them in this respect, and to pave the way, if possible, for an ultimate agreement, I have, on behalf of Her Majesty, to propose to Your Excellency that the treaty of arbitration adopted between this country and Venezuela, with the assent, and largely at the instance of, the United States, shall be applied to the determination of the Alaska boundary which is now under discussion. That treaty is now receiving its application at Paris, and during the three years which have elapsed since its conclusion no

\* For the Protocol (No. 63) of the International Joint High Commission, dated 18th February, 1899, embodying the British proposals for the settlement of the Alaska boundary question by Arbitration, see Sessional Paper No. 99 of the year 1899.



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question as to its fairness or applicability has arisen between the contracting parties. I am not able to find in its terms anything which is inapplicable to, or which would be inconsistent with an equitable and conclusive solution of, the Alaskan controversy. It is possible that in some respects its details may be improved, but, such as they are, they appear to Her Majesty's government to be adequate for the purpose which we have in hand ; and I have to request that Your Excellency will lay before the President the proposal of Her Majesty's government that the Venezuela treaty, as it stands, shall be applied to the determination of the Alaska boundary between the Dominion of Canada and the United States.

I have, &c.,

(Signed) SALISBURY.

No. 2.

*Mr. Choate to the Marquess of Salisbury.—(Received July 10.)*

AMERICAN EMBASSY, LONDON, July 8, 1899.

MY LORD,—I have the honour to acknowledge the receipt of your Lordship's note of July 1, proposing an arbitration of the Alaskan Boundary question; and, in accordance with your Lordship's request, immediately upon its receipt I communicated the substance of it by cable, and by the first subsequent mail a full text of the note was transmitted to the Department of State.

I hope soon to have the pleasure of receiving and submitting to your Lordship the President's views.

I have, &c.,

(Signed) JOSEPH H. CHOATE.

No. 3.

*The Marquess of Salisbury to Mr. Tower.*

FOREIGN OFFICE, August 2, 1899.

SIR,—The United States' Ambassador called upon me to-day in order to discuss the proposal recorded in my note to His Excellency of the 1st ultimo, that the Alaska boundary question should be submitted to arbitration, and that the Treaty of Arbitration adopted between Great Britain and Venezuela should be applied to the determination of the present case.

Mr. Choate said that this proposal was being attentively considered by his government, but that on several grounds, which he proceeded to explain to me, the President felt unable to assent to the proposal as it stood, and desired a further exchange of views before formally responding to my communication.

As the question of the organization of the proposed Arbitral Commission is subordinate to that concerning the subject-matter to be arbitrated, and the terms and conditions on which its action is limited, and ought easily to be agreed upon when the latter are once settled, Mr. Choate said he would confine what he had to say to some of the reasons which, in the President's judgment, make the terms of the Venezuelan Treaty, as it stands, wholly inapplicable to the present subject of controversy, in which the issues involved are radically different.



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The case of the Alaska boundary was, His Excellency said, entirely unlike the controversy with Venezuela, in that it was a new question, raised for the first time after the Joint High Commission had been agreed upon, up to which date the claim which it was now asked should be submitted to arbitration had never been put forward either by Great Britain or by Canada; whereas, in the case of Venezuela, the controversy originated a century and a-half ago, and had been in its entirety a subject of dispute and protest for sixty years.

The coast-line of the mainland (the *lisière* of the treaty), including the inlets, had been in the possession, or under the control of, Russia and the United States since the treaty between Russia and Great Britain in 1825, and the settlements on the inlets, especially those about the head of the Lynn canal, had been made with the authority, and under the jurisdiction of, the United States, without any protest or claim of territorial ownership on the part of Great Britain; whereas, in the Venezuelan case, the British occupation and settlements involved were upon territory claimed by Venezuela, and against the constant protests of Venezuela, thus constituting, as Venezuela alleges, a series of advancing encroachments upon what that country claimed to be her territory.

In support of the proposition, that from the treaty of 1825 to the cession to the United States in 1867, the Russian Government steadily maintained its claim to a strip of territory 30 miles in width on the mainland of the continent, beginning at 50° 40' and extending north-west around all the inlets and interior waters to the 141st degree of west longitude, His Excellency called attention to the maps issued by the Russian Government, to its lease or license, contained in the treaty with the United States of 1824, for the citizens of the latter to frequent with their ships, for ten years, 'the interior seas, gulfs, harbours, and creeks upon the coast' for the purpose of fishing and trading with the natives, and to Russia's refusal in 1835 to renew the privilege.

During the whole period of Russia's occupation of this strip of territory, Great Britain had, Mr. Choate said, made no claim to it and entered no protest; on the contrary, there were acts on her part of express recognition of the claim of Russia. By the treaty of 1825 she took from Russia the same privilege for British subjects to frequent the same inland seas, gulfs, harbours, and creeks, for ten years, as had been granted to American citizens by the treaty of 1824, and, after the expiration of the ten years' privileges, British subjects and vessels were excluded from these interior waters, and the British Government acquiesced in this without a protest.

In the same connection his Excellency called attention to the case of the *Dryad*, where the British Government presented and pressed upon the Russian Government a claim of the Hudson Bay Company for damages sustained by the detention of the vessel destined for some point on the Stikine River, which resulted in the Hudson Bay Company taking in 1839 a lease from the Russian American Company (these two companies representing their respective governments in the control of the country along the north-west coast) of the strip of territory, or *lisière* of the Treaty, for ten years, in consideration of an annual rent and the extinction of the claim. This lease was made with the authority and approval of the two Governments. The Hudson Bay Company entered and occupied under it for the term of the lease, and for an extension of another term, and then surrendered possession without objection or protest from any one.

Mr. Choate also called my attention to the special Parliamentary inquiry into this transaction in 1857, to the map submitted to the Committee, and to the testimony of the Governor of the Hudson Bay Company, showing the strip leased to have been 30 miles in width, and to extend around the head of all the inlets, including Lynn canal.

In the opinion of the President, the action of the two Governments during Russia's occupation of the strip of territory now in controversy makes a wholly different condition of affairs from that between Great Britain and Venezuela, and this



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difference has been maintained and made more distinct since the cession by Russia to the United States.

In support of this His Excellency called my attention to the map prepared and published by the United States in 1867 which delimited the boundary, and which traced the limits of the strip on the mainland in accordance with the uniform claim which Russia had made. Not only was no protest made against this map by the British Government, but the British map publishers and the Canadian Government had adopted the same boundary line in their publications. And, in accordance with this delimitation, the United States had, he said, exercised acts of sovereignty such as control of Indian tribes, establishment of post offices and schools, and the policeing of the waters of the inlets by Government vessels, and the enforcement of revenue and other Federal laws.

Mr. Choate then called attention to the fact that, up to a very recent period, the boundary line has only twice been the subject of correspondence or discussion between our two governments: first in 1873-74, when there was a movement for having the boundary line marked by a commission of scientific experts, and it was then understood that the boundary line crossed the Rivers Skoot, Stikine, Taku, Islecat, and Chilcat at some place above the point where they respectively empty into the inlets of the ocean, and, shortly after that, when there was some question as to where the boundary crossed the Stikine.

His Excellency referred incidentally to the case of Peter Martin, 1877, the correspondence in respect to which appears in 'Foreign Relations of the United States, 1877', pp. 266-271, and to the Provisional Agreement for Customs purposes in 1878, the correspondence in respect to which appears in 'Foreign Relations of the United States, 1878', pp. 339-346.

The slight conflict of jurisdiction in the vicinity of Lake Lindeman, shortly after the discovery of gold in the Yukon district, seemed, he said, to have but little bearing, as it related to territory between Lake Lindeman and the White Pass.

It appeared clear that not until after the Joint High Commission was created (30th May, 1898) did either Great Britain or Canada ever advance the claim to any portion of territory lying adjacent to the inlets of the ocean, nor to the waters thereof; nor had they objected to the occupation of the same by the Government of the United States or its citizens, and at no time had any part of the territory so lately put in dispute been held or occupied by Canadian or British authorities.

The towns, settlements, and industries about the head of Lynn Canal and the other inlets embraced in this strip of territory having been established under these circumstances, a wholly different situation had, in the opinion of the President, been created in regard to them from that involved in the Venezuela case, so utterly different that the government of the United States would feel that it was not properly guarding the rights of its citizens if it should consent to put these settlements in peril by applying to them the terms of the Venezuela Treaty, which was designed for a wholly different state of affairs; nor would the President feel justified in submitting the questions involved to any arbitration unless United States' settlements, made in good faith before this new claim was presented on the part of Canada, were expressly exempted from its operation.

Mr. Choate further called attention to a material difference between the questions to be decided by the two Tribunals. In the one case the disputed interpretation of a treaty definition of a boundary line, in a treaty made seventy-four years ago, and remaining undisputed through the long period of the Russian occupancy and administration of the *lisière*, and through nearly all the time that the territory had been held by the United States under the cession from Russia, and only very lately brought in question; in this case the interpretation was to be made in the light of prior and subsequent historical facts of occupation, administration, and recognition, and of the acts and omissions of the parties concerned. Here, while the question of actual settlement and administration is collateral to the main subject of arbitration, and, being of great



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importance, is rightly to be guarded by the distinct understanding suggested by the President, it is not, as in the Venezuelan case, the essential point directly at issue. In the other case the controversy rested, he said, not upon the interpretation of any such treaty definition of the boundary line, but essentially upon the historical facts of occupancy and possession, out of which the arbitrators were to determine the boundary line in conformity to the rules prescribed to them.

The proposal of Her Majesty's Government for an arbitration would, Mr. Choate said, be entertained by the President with that earnest consideration which its importance and the high source from which it came deserved; and having thus laid before me Mr. McKinley's reasons for his judgment, that the two cases are radically different, and the terms of the Venezuelan Treaty, as it stands, are utterly inapplicable to the present case, he was instructed to express the opinion of the President that it would be wise, at this stage of the negotiation, to have a comparison of views, and to state that he would be much gratified if I would give my views in return upon the matter now presented, and would communicate the grounds upon which Her Majesty's Government base their opinion, that 'there is nothing in the Venezuelan Treaty which is inapplicable to, or which would be inconsistent with, an equitable solution of the Alaska controversy.'

Mr. McKinley hoped that, when the conflicting views of the parties were thus disclosed, they might, perhaps, be reconciled or adjusted by mutual concession, and that the way might thus be paved for an ultimate agreement.

I am, &c.,

(Signed) SALISBURY.

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No. 4.

*The Marquess of Salisbury to Mr. Tower.*

FOREIGN OFFICE, October 14, 1899.

SIR,—In my despatch of August 2, I informed you of a communication made to me by the United States' Ambassador, stating the grounds upon which the President felt himself unable to assent to my proposal for the reference of the Alaska boundary question to arbitration on the terms adopted in the treaty of February 2, 1897, between Great Britain and Venezuela.

Mr. Choate said, in conclusion, that he was instructed to express the opinion of the President that it would be wise at this stage of the negotiation to have a comparison of views, and to state that he would be much gratified if I would give my views in return upon the matter presented and communicate the grounds upon which Her Majesty's Government base their opinion that 'there is nothing in the Venezuelan Treaty which is inapplicable, or which would be inconsistent with an equitable solution of the Alaska controversy.'

I would observe at the outset that there appears to be some misapprehension on the part of the United States' Government as to the nature and scope of the proposal submitted to His Excellency, who has treated it as if it only applied to the determination of the boundary in the neighbourhood of the Lynn canal, instead of to the whole frontier of the *lisière* of coast defined in the IIIrd and IVth Articles of the Treaty of 1825.

No doubt it is in regard to that part of the boundary that the widest divergence of views has arisen between the two Governments, but it only needs a reference to the maps which purport to mark the boundary as claimed by the respective Governments to show that the difference is by no means confined to the region of the Lynn Canal,



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but extends throughout the whole length of the strip from Portland channel to Mount St. Elias.

The events of the last two or three years arising out of the Yukon gold discoveries have given exceptional prominence and importance to that part of the boundary, but it will hardly be maintained that prior to these events there was any reason why, while the whole line was undetermined, and its settlement was not regarded on either side as a matter of pressing importance, special attention should have been devoted by Her Majesty's Government to that particular region.

It is necessary to bear this in mind in considering the various reasons put forward by the United States Government, on account of which they claim to distinguish the present dispute from that recently discussed before the Tribunal of Arbitration at Paris.

The general effect of the United States' contention is that the claim put forward by Her Majesty's Government that the boundary line should cross the Lynn canal in the neighbourhood of Berner's bay, following the general line of the coast range of mountains indicated by the treaty as the position of the boundary, is a new one first put forward after the Joint High Commission had been created, and that before then Her Majesty's Government had made no claim to the head waters of the canal, or any protest against various acts on the part of Russia and the United States inconsistent with that claim, and that the United States Government are therefore justified in refusing to allow the question of the possession of these waters to be adjudicated upon by an independent tribunal.

I wish to point out in the first place that there has been but little discussion of the boundary question between the two Governments, but whenever it has been referred to it has been on the admitted basis that the whole line was undetermined, and that the interpretation of the boundary articles of the treaty was entirely an open question as to which each Government was free to urge its own views.

This was the view accepted by President Grant in his Annual Message to Congress of December 2, 1872, and by Mr. Secretary Bayard in his despatch to Mr. Phelps of November 20, 1888, and, as was pointed out in that despatch, no question concerning the true location of the line stipulated in the treaty had ever arisen between Great Britain and Russia prior to the cession of Alaska to the United States. The only value of the region during that period lay in the fur trade, and during the first ten years after 1825 that trade was thrown open on equal terms to the subjects and citizens of Great Britain, Russia, and the United States by Article VII. of the treaty between Great Britain and Russia of 1825, and Article IV. of the treaty of 1824 between the United States and Russia, and before the expiry of the ten years the negotiations between the Hudson's Bay Company and the Russian American Company which resulted in the lease to the former of the trade of the whole of the *lisière* southward and eastward of a line joining Cape Spencer and Mount Fairweather had been initiated. By that lease the exclusive right of trade and commerce in the *lisière* outside the line mentioned, covering practically the whole territory the boundary of which is in dispute, became vested in the company which enjoyed a similar monopoly in the territory on the British side of the frontier, wherever it might be, and, as it was a matter of indifference to it whether it derived its rights from its British charter or its Russian lease, no question as to the true location of the line could arise. The lease, though originally for ten years only, was renewed from time to time and terminated only on the date when Alaska was ceded to the United States.

When subsequently to that cession, the gold discoveries in the Cassiar district of British Columbia, to which the most convenient access lay through the Stikine River traversing the *lisière*, rendered it desirable to locate the boundary in that region, the discussion between the two Governments was entirely confined to the question of a joint survey, an indispensable preliminary to any attempt to fix the boundary, and never touched on the interpretation of the treaty. Indeed, in the complete absence of topographical information as to the country, it was obviously impossible to discuss



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that question, and it was tacitly avoided by both sides. Even when later Mr. Secretary Fish threw out the suggestion referred to by Mr. Choate that the points where the boundary crosses certain rivers might be surveyed with a view to a partial delimitation, he declared that it was doubtful whether Congress would vote the money necessary for the purpose, doubts which were speedily verified by the action of that body, and it can scarcely be a matter of surprise that a suggestion made in such circumstances failed to receive critical examination at the hands of the British or Dominion Governments, and that no attempt was made to initiate a discussion as to the interpretation of the treaty which, in the absence of a survey, must have been of a purely academic nature.

The case of Peter Martin in 1877, to which Mr. Choate also refers, does not appear to have any bearing on the matter, as it turned on the question of his unauthorized conveyance as a prisoner through United States' territory, and Her Majesty's Government have never questioned the right of the United States' Government to territory at the mouth of the Stikine River, though the question how far inland that territory extends remains in dispute.

Mr. Choate made no reference to the correspondence initiated by Mr. Bayard in his note to Mr. Phelps of the 20th November, 1885, which has already been mentioned. That note made no claim that the interpretation of the treaty as regards any particular part of the boundary-line was no longer open, and the Earl of Iddesleigh, in his note to Mr. Phelps of the 27th August, 1886, inclosing copy of the map of the Dominion of Canada, geologically coloured, for which Mr. Phelps had asked, and on which a line was shown separating the *lisière* from Canadian territory, stated clearly the attitude of Her Majesty's Government in regard to the position of the disputed boundary in the following words:—

'In forwarding to you a copy of the map in question, I have the honour to invite your attention to the fact that the Alaska boundary line shown thereon is merely an indication of the occurrence of such a dividing line somewhere in that region. It will, of course, be readily understood that no weight could attach to the map location of the line now noticed, inasmuch as the Convention between Great Britain and Russia of the 28th February, 1825, which defines the line, makes its location depend on alternative circumstances, the occurrence or the non-occurrence, of mountains, and, as is well known to all concerned, the country has never been topographically surveyed. Her Majesty's Government therefore feel that they are bound distinctly to disavow the recognition of the correctness of the line shown, on the edition of the map in question forwarded herewith, as the boundary-line between the Province of British Columbia and Alaska.'

The United States government took no exception to this declaration, which was followed later by the statement in the memorandum given to Mr. Bayard by Sir L. Sackville West on the 14th September, 1887, as to the action of Lieutenant Schwatka during his reconnaissance of 1883 in purporting to fix Perrier's Pass at the head of the Lynn Canal as a point on the boundary. It was there stated that 'although Her Majesty's Government have agreed in principle to take part in a preliminary investigation of the Alaska boundary question, they are not prepared to admit that the points referred to by Lieutenant Schwatka in any way fix where the line should be drawn. It is not sought to raise any discussion at the present moment in regard to the position of the boundary between Alaska and British Columbia; but in order that it may not be prejudiced hereafter by absence of remark on the points alluded to above, Her Majesty's Government have thought it expedient to call the attention of the United States Government to the foregoing observations.'

Shortly after in the informal discussion of the boundary question between Dr. Dawson, on the part of Her Majesty's Government, and Dr. Dall, on the part of the United States' Government, during the sittings of the Joint High Commission of 1888, the former made it distinctly clear that Her Majesty's Government claimed that the boundary should, in accordance with the terms of the treaty, be drawn along the



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summits of the coast range, crossing all narrow waters which were of such width as to be within territorial jurisdiction.

When the Conference between the British Delegates and Mr. Secretary Blaine was held in February 1892, the views of Her Majesty's Government as to the boundary were fully stated, and it was proposed on the part of the British Representatives 'that a reference to some impartial authority be made by Great Britain and the United States for the purpose of ascertaining and deciding finally the true boundary, regard being had to the treaties relating to the subject, and likewise to the case which may be presented by either Government, and to the testimony which be adduced as to the physical features of that country,' &c.

The representatives of the United States, Mr. Blaine and General Foster, considered that it was premature to provide for a reference to arbitration until a survey had been made, and the two Governments had had an opportunity of considering and discussing the question in the light of the facts revealed by that survey, and they handed in a proposal which was accepted and embodied with slight verbal amendments in article I. of the treaty of July 22, 1892. That article provided for a coincident or joint survey 'with a view to the ascertainment of the facts and data necessary to the permanent delimitation of said boundary line in accordance with the spirit and intent of the existing treaties in regard to it between Great Britain and Russia and between the United States and Russia,' and further, that 'The High Contracting Parties agree that, as soon as practicable after the report or reports of the Commissions shall have been received, they will proceed to consider and establish the boundary line in question.'

It is clear from this that the whole question of the interpretation and application of the treaty was, by common consent, left over for discussion, after the completion of the survey in the light of the facts which it disclosed, and it might fairly be argued from the express terms of the convention that both governments had estopped themselves from contending that the boundary should be run otherwise than in accordance with the 'spirit and intent' of the existing treaties in regard to it between Great Britain and Russia and between the United States and Russia.'

It is evident in any case that, at any rate in 1892, neither Government claimed to have any rights in the disputed territory arising out of possession, occupation, or political control. Nor does it appear that any such claims were preferred on the part of the United States until the meetings of the Joint High Commission.

The elaborate series of maps on which the results of the joint survey were embodied were not received by Her Majesty's Government until March, 1898, but in the meantime Her Majesty's Government, realizing the improbability of a settlement being reached by diplomatic discussion, as contemplated by the Convention of 1892, and the need of an early settlement, owing to the new conditions created by the Yukon gold discoveries, had instructed Sir J. Pauncefote to propose to the United States' Government a reference of the question to three jurists of high standing, one nominated by each of the two Powers, and the third by an independent Power, and that this Commission should proceed at once to delimit the boundary at the heads of the inlets through which the traffic for the Yukon entered, principally at the head of the Lynn canal.

This proposal was made by Sir J. Pauncefote to Mr. Sherman on February 23, 1898, and in making it he specifically alluded to the divergence of views revealed by the informal discussion which took place in 1888. On March 2 he reported to me that the United States' Government were anxious for a provisional boundary, the rights of both parties being reserved pending a final settlement, but were unwilling to proceed with a new convention providing for arbitration until diplomatic discussion had failed to secure a settlement.

A proposal for a provisional boundary was made by Sir J. Pauncefote on April 18 in a memorandum in which he stated that, 'in view of the wide divergence of views existing on the subject of the Alaska-Canadian boundary, the Dominion Govern-



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ment fear that the suggestion to proceed with the demarcation under the Convention of 1892 would lead to no result. They are, however, prepared to agree that a provisional line should be fixed without prejudice to the claims of either party at the watershed of the first summit north of Dyea. Such a provisional boundary would be at a distance of considerably more than 10 leagues from the coast.' In answering this memorandum, on May 9, Mr. Day stated: 'In consenting to the temporary marking of the boundary line in the method just indicated, this Government desires it to be distinctly understood, on the part of both Governments, that this arrangement is not to be construed as affecting in any manner rights under existing treaties for the ultimate consideration and establishment of the boundary line in question.'

When, therefore, the Joint High Commission met in August, 1898, to discuss the question, it was clearly understood on both sides that the line was to be determined 'in accordance with the spirit and intent' of the treaty, without restriction, the rights of both parties having been fully and distinctly reserved whenever any question of the interpretation or application of the treaty was discussed, and the fact of such reservation expressly recognized on both sides.

It has already been fully explained why no question as to the interpretation of the treaty was raised by either party until 1885, and that on the first occasion when the discussion of the matter was approached, Her Majesty's Government gave distinct notice that they entirely disavowed the correctness of the line shown on the maps to which the United States' Government appealed.

In view of these facts Her Majesty's Government are fairly entitled to claim that as a settlement of the question cannot be reached diplomatically, the interpretation of the treaty and its application to the facts ascertained by the survey should be submitted unreservedly to an impartial Tribunal, without any such restrictions as were contained in the Venezuelan Treaty, and in proposing to allow, as provided by that instrument, continuous adverse possession for fifty years, if such can be proved, to override treaty right, they have made a distinct concession to the United States.

They do not, of course, admit that there has been any such adverse possession, by way either of exercise of jurisdiction or of political control, and if the United States' citizens have settled recently at the head of the Lynn canal, they have done so in the full knowledge, as given in the documents inclosed in President Cleveland's Message to Congress of March 2, 1889, that they were settling in disputed territory, and Her Majesty's Government are unable to see any reason why such settlement should receive further or greater recognition and protection than the United States' Government considered should be accorded to British subjects who had settled in the area in dispute between this country and Venezuela.

It is not necessary to discuss in detail each of the various points advanced in Mr. Choate's communication in favour of the United States' interpretation of the Treaty. Facts and arguments of equal cogency can be advanced on the other side by Her Majesty's Government, and they are all points which can be submitted to an arbitration tribunal under the rules laid down in the Venezuelan Treaty, and unless there are other facts and circumstances upon which the United States' Government rely, but which might be excluded from the consideration of the tribunal by these rules, Mr. Choate has not, so far as can be seen, advanced any reason to warrant Her Majesty's Government in departing from the view expressed in my note of July 1, that there is nothing in the terms of the Venezuelan Treaty 'which is inapplicable or which would be inconsistent with an equitable solution of the Alaskan controversy'.

The question immediately under discussion is whether or not the dispute as to the boundary should be referred to arbitration, and it is difficult to understand why the length of time during which the rival claims to disputed territory have been matters of controversy should form an element to be taken into consideration in that connection. If it be desirable on other grounds to employ the assistance of an impartial tribunal as the best means of terminating the dispute, the length of the period of previous controversy appears to be immaterial.



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The exercise of the rights of sovereignty within the area in dispute by control of the Indian tribes and establishment of administrative machinery therein was, as the United States' Government are aware, one of the principal grounds put forward by Great Britain in support of her right to the territory claimed by Venezuela and such grounds, if put forward by the United States' Government with reference to the Alaska boundary, would, no doubt, be fully considered by a Tribunal of Arbitration, and if found to be established for the period prescribed in the treaty, might settle the controversy in their favour.

But it is not admitted that such control was exercised by the United States until very recently, and after due notice of the claim of Her Majesty's Government, and in these circumstances, the fact of its exercise appears to be a reason in favour of, rather than an obstacle to, arbitration.

The fact that the starting point in the present controversy is a treaty, and that, in the dispute with Venezuela, the claims on either side were based on discovery and occupation, cannot, in the opinion of Her Majesty's Government, constitute any essential difference between the two cases. The rules agreed to by Great Britain and the United States for the guidance of the tribunal were intended to provide for the admission in argument of every ground upon which an equitable claim to disputed territory may be based. As has already been pointed out, it is the Government of the United States who have imported into the present discussion other considerations than that of strict treaty right, and I trust that on full consideration they will not continue to object to these considerations being tested by rules which, with their approval, and with the consent of Her Majesty's Government, have been applied to a similar case.

● If, however, the United States' Government still consider that the terms of the Venezuelan Treaty are in any respect inadequate to provide for an equitable settlement of the present controversy, such suggestions as they have to offer will receive attentive consideration from Her Majesty's Government.

You are authorized to read this despatch to Mr. Hay, and to leave a copy of it with him if he should so desire.

I am, &c.,

(Sgd.) SALISBURY.

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No. 5.

*Mr. Tower to the Marquess of Salisbury.—(Received November 9.)*

WASHINGTON, October 30, 1899.

MY LORD,—I have the honour to acknowledge the receipt of your Lordship's despatch of the 14th instant, containing the reply of Her Majesty's Government to Mr. Choate's communication to your Lordship, as recorded in your Lordship's despatch of August 2, relating to the reference of the Alaska boundary question to arbitration on the terms adopted in the Treaty of February 2, 1897, between Great Britain and Venezuela.

I read the despatch to Mr. Hay this morning, and, at his desire, left a copy with him, in accordance with your Lordship's authorization.

I have, &c.,

(Sgd.) REGINALD TOWER.



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No. 6.

*Mr. Choate to the Marquess of Salisbury.—(Received January 22.)*

AMERICAN EMBASSY, LONDON, January 22, 1900.

MY LORD,—Your Lordship's despatch to Mr. Tower of October 14, 1899, has been placed in my hands, with instructions to respond to your Lordship's courteous request to make further suggestions in reply bearing upon the question under discussion.

The United States' Government is not to be understood as refusing to submit to the adjudication of an independent tribunal the real question at issue between us in respect to the Alaska boundary. On the contrary, as I understand it, the present discussion contemplates the probability of such a submission. As I stated in my note of August 9,\* to which your Lordship's note to Mr. Tower is an indirect reply, the President was prevented by the considerations there stated from assenting to the proposal that the Venezuela Treaty, as it stands, should be applied here, and that the subject matter to be adjudicated and the terms and conditions by which its action should be limited ought, if possible, first to be decided.

The Venezuela Treaty was calculated, and, as the result has shown, well and properly calculated, to enable the tribunal to make by compromise a boundary line in respect of which there has never been an agreement between the parties, and to evolve a fair adjustment of their respective claims out of the facts of discovery, occupation, and other historical circumstances in which their dispute as to the boundary had been involved for more than a century, during which the question had been always open. But in the present instance there is an express agreement of the parties defining the boundary—in the Treaty of 1825—which has subsisted ever since, practically without dispute as to its interpretation on the principal point. A clear and distinct interpretation on this point was put upon it by both parties in the written negotiations which resulted in the meeting of their minds upon it. This interpretation was regarded by both parties as vital and very important to their respective interests. It was publicly declared and acted upon by Russia from the date of the treaty until she conveyed to the United States in 1867, and all that time, at any rate, it was acquiesced in by Great Britain. The United States continued publicly to maintain and act upon the same interpretation, with the acquiescence of Great Britain, confessedly until 1885, and, as we claim, until 1898, when a new and wholly different interpretation on this main point is put forward by Great Britain. The two interpretations thus presented are absolutely distinct, and are not involved in any confused or doubtful historical explorations. One or the other is right, and can and should be ascertained and determined so to be, to the exclusion of the other, and neither party wishes to acquire an inch of the territory rightly belonging to the other. Surely the tribunal which is to pass upon such a question should not be enabled to compromise it, but should be required simply to decide it. If the difference thus raised is to be compromised, it should be compromised by the parties themselves, so that they can know exactly what they are doing.

I have spoken of the interpretation of the treaty upon the principal point. By this, I mean the question whether the strip of coast ('la lisière de côte') which, by the treaty, is to belong to Russia, runs around the shores of the inlets or across their mouths—the former construction necessarily excluding Great Britain from the salt water at all points to a distance measured by the crests of the mountains parallel to the coast, if there are such, or by 10 leagues in the absence of such mountains, while the latter construction as necessarily gives to Great Britain so much of each inlet as extends above a point crossed by a line drawn from the crest of the mountains nearest to the coast. This is a question of construction between the two parties, to be determined in the usual way by the language of the treaty interpreted in the light of the acts of the parties before and after, and including any claim of either that the other is

\*The terms of this note were similar to the communication made by Mr. Choate on August 2 and recorded in the despatch to Mr. Tower of that date.



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estopped to dispute the construction which it asserts. It is eminently a question for jurists to determine judicially, and it was with this view that the United States, through its Commissioners in the Joint High Commission, offered to submit it to a perfectly independent tribunal, to be composed of six learned jurists, three to be named by each party, and a majority of them to decide. It is not easy to see how any judicial tribunal could compromise it, unless expressly commissioned to do so, as in the Venezuela case. They must decide it one way or the other.

This is the question which we maintain was never raised by Her Majesty's Government until 1898. Russia and the United States claimed the former interpretation from first to last; Great Britain realized its intrinsic importance from the beginning, but never disputed our interpretation, which was open, public, and uniform. These features of the case now presented differentiate it radically from the Venezuela case.

Your Lordship states that no question as to the interpretation of the treaty was raised by either party until 1885.' It would be more in harmony with my view of the situation to say that Russia and the United States uniformly and publicly asserted an interpretation of the treaty which Great Britain did not dispute.

But assuming this fundamental and very important question, to be decided either by an independent tribunal or by agreement of the parties, another question remains still to be determined—one of great importance and which has always been open—namely, the exact location of the boundary line according to the spirit and meaning of the treaty and its precise distance at every point from the coast. This is a question of no small difficulty, growing out of the alternative provisions of the IIIrd and IVth Articles of the Treaty, by the former of which the width of the strip or the distance of the British possessions from the coast is to be measured to the crests of the parallel mountains, but by the latter, if no such mountains are found within 10 leagues, then by that distance or by a distance never exceeding that.

This minor or secondary question might, of course, also be referred to an arbitration; but it is obviously not, like the first, a question for jurists. It would properly be disposed of by a joint survey. And it is a question of such minor importance, after the first question has been once determined, that neither party would probably desire to go to the great expense and trouble of an arbitration about it, but they would either run the line by agreement or leave it to be run by a joint survey, as was once agreed between them. For if the first question were once determined in accordance with the present contention of Her Majesty's Government, Great Britain or Canada would have in her own possession such a wide and ample stretch of sea coast, being the entirety of all inlets beyond a point crossed by a line drawn from the crests of the mountains nearest the coasts, that a few miles, or even leagues, more or less, would make no substantial difference; while, on the other hand, if that question were once determined in accordance with the uniform contention of Russia and the United States since 1825, Great Britain or Canada having no possible foothold on the sea coast through the whole length of the strip or *lisière*, a few miles, or even leagues, more or less, in its width at any point, would make no very important difference to either party.

The difficulty of locating the exact boundary line according to any interpretation of the treaty was in great measure removed by the report and maps of the joint survey created by agreement of Great Britain and the United States in 1892.

Before taking up your Lordship's review of the facts and incidents since the date of the treaty between Great Britain and Russia, which are cited as confirming the view that the question of the interpretation of the treaty has been always open, I venture, with deference, to ask whether, in that review, the distinction which I have drawn between the question of the interpretation of the treaty and the question of the actual demarcation of the boundary line has not been lost sight of, for it appears very clearly to me that nearly all of them recognize as an open question the actual demarcation of the line, which must remain open until it is actually accomplished, and that



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they do not suggest or assume that the question of the interpretation of the treaty now raised and insisted upon by Great Britain was open.

It would be strange, indeed, if Her Majesty's Government, at the time of the exchange of the treaty with Russia—or the Russian Government of that day—could have regarded the question now raised by Great Britain as left open, or that any question under the treaty was left doubtful or open for future determination, except the actual demarcation of the boundary line so as to carry out the spirit and intent of the treaty as well known to them both and freshly in their minds from the protracted and very earnest struggle which they had had over its terms.

One persistent effort of Her Majesty's representatives in that negotiation was to get to the sea, in the interest of the Hudson's Bay Company. The equally persistent effort of the representatives of Russia was to set up a barrier in a strip of land which should keep Great Britain away from the sea at all points from the southern end of Prince of Wales Island to Mount St. Elias, so that the Russian establishments on the islands and the coast belonging to the Russian-American Company could by no possibility be interfered with, a point which the negotiators on behalf of Great Britain expressly and finally yielded.

I may not properly here enter upon an analysis of the protracted negotiations which culminated in the Treaty of 1825. They are now very familiar, and as we claim the whole course of the negotiation shows that the British plenipotentiaries, and Mr. Secretary Canning as well, had a perfectly clear conception of the *lisière* upon which Russia insisted so strenuously—that it was to be Russia's impenetrable barrier to any alien access to or from the inner region of the mainland, a strip of territory running parallel to the sinuosities of the coast, and necessarily around the inlets and not across their mouths, extending at all points from the water's edge to the interior possessions of Great Britain, beginning at the point of the continent where the line, ascending to the north along Portland channel, strikes the 56th degree of north latitude and extending to the intersection of the 141st meridian. It constituted a definite expanse of territory over which, and over the tide water along it, as well as over the islands outside of it, Russia possessed an exclusive jurisdiction—the same which she afterwards conveyed in its entirety to the United States. It could be pierced in favour of Great Britain only by rivers having their origin in British dominions, and flowing through the Russian territorial strip to tide water; and as to these, no lodgment on the Russian shore, but only access to the interior, was granted to Great Britain. The provisions as to this strip of land in the Vth and VIth Articles of the original treaty, where it is referred to as '*la lisière de terre ferme*' and '*lisière de la côte*,' must have been understood by the negotiators on both sides in the same sense.

And the fact that, by the VIIth Article of the treaty, Russia gave, and Great Britain took, a license for British vessels for ten years from the date of the treaty to frequent '*toutes les mers intérieures, les golfes, havres, et criques sur la côte*' proves that the negotiators on both sides must have understood that all these interior waters, &c., were in Russian territory.

In view of this, we claim and insist that when the treaty was signed the question now raised and pressed by Her Majesty's Government whether the *lisière* ran around the inlets or sinuosities of the coast or across their mouths was not left open or understood by the negotiators on either side, or by either Government for which they acted, as an open question, and if not then left open, it was certainly never attempted to be opened until 1885—and, as we claim, not until 1898. Of course, the actual demarcation of the line, with whatever difficulties pertained to it, according to the spirit and meaning of the treaty, was necessarily left open, and could only be determined after the country was explored by competent survey.

Coming now to the references to the boundary question in subsequent correspondence between the Governments, which your Lordship regards as having been always upon the admitted basis that the whole line was undetermined, and that the interpretation of the boundary Articles of the Treaty was entirely an open question, I submit that



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in each instance, especially in view of what had preceded during Russia's ownership, these references indicated or assumed no more than that the whole line was undetermined in the sense of not having been surveyed and marked, but not that the interpretation of the Treaty on the main point now under consideration was in any sense open.

Immediately after the making of the Treaty, the Russian Government proceeded with the preparation of a map, showing the respective possessions of Russia and Great Britain as fixed by the treaty. This map was published in St. Petersburg in 1827 by order of His Imperial Majesty. It runs the boundary line from the head of Portland Channel at a distance of 10 marine leagues from tide water around the head of all the inlets to the 141st meridian. And along this line upon the map is inscribed the words: 'Limites des possessions Russes et Anglaises d'après le Traité de 1825.' There could have been no more direct and peremptory challenge to Great Britain, if its government at that time regarded the interpretation of the Treaty as having been left an open question at the time of its signature, or as being then an open question as to which each Government was free to urge its own views.

The great importance of this location of the boundary as between the two nations, as represented respectively by the Hudson's Bay Company and the Russian-American Company, must have been still very fresh and vivid upon the minds of His Majesty's Ministers who had negotiated and concluded the Treaty, Russia thus proclaiming to them and to the world a clear and emphatic interpretation of the Treaty which conformed to that which the negotiators on both sides had put upon it. Was not that the time and the last time for Great Britain to speak? Could her Government lie by without a protest, and at any time afterwards claim a different interpretation which would nullify the whole object of Russia in making the Treaty? But Great Britain did not merely lie by without a protest; she and Canada also expressly adopted this location of the boundary exactly as Russia had defined it.

In 1831 the map prepared by Bouchette, Deputy Surveyor-General of the Province of Lower Canada, 'published as the Act directs by James Wild, Geographer to the King, London, May 2, 1831,' traces the Russian boundary on the continent exactly according to the Russian Imperial Map of 1827. And in 1832 the map of Arrowsmith, the most authoritative cartographer of London, whose earlier map had been used by the negotiators of the Treaty, does exactly the same thing, stating upon its face that it contains the latest information which the documents of the Hudson's Bay Company furnish. And it will hardly be questioned that at that time the Hudson's Bay Company possessed all powers of Government in the British territory in that region, and was in fact the only British authority there. Can it be claimed that at the time of the publication of that map, apparently by the authority of the Hudson's Bay Company and of the British Government—at any rate, without a protest from either—they then regarded the interpretation of the Treaty on this cardinal point as an open question?

And on Canadian authority maps were subsequently published defining the boundary in the same way, excluding Great Britain from all access to tide water along the whole extent of the line—notably, Devine's Map, published 'by order of the Honourable Joseph Cauchon, Commissioner of Crown Lands, Crown Department Toronto, March, 1857.' All the map makers of the world followed suit, and a careful search has failed to discover any map published anywhere prior to 1884, in which this boundary line did not conform to the original Russian Imperial Map of 1827.

Your Lordship suggests that the only value of that region during the period from 1825 to 1867 lay in the fur trade; that by the terms of the Treaty that trade was thrown open on equal terms for ten years to the citizens of Great Britain, Russia, and the United States; that before the ten years expired the negotiations between the Hudson's Bay Company and the Russian-American Company, which resulted in the lease by the latter to the former of the *lisière*, had been initiated; and that as that lease, though made at first for ten years, by renewals terminated on the date when



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Alaska was ceded to the United States, it was a matter of indifference to that company whether it derived its rights from its British Charter or from the Russian lease. But to me it is hardly conceivable that the Hudson's Bay Company, backed by the whole power and prestige of the British Government, would, with its approval, have accepted that lease if either the Company or the Government had had the least idea that, under the Treaty of 1825, they were entitled, as of right, to what they took by lease and to what Canada now claims; and so I insist, with renewed earnestness, that the takings of that lease and the renewals were declarations to the world that neither regarded as open the contention now made on behalf of Canada.

The information conveyed in your Lordship's note, that before the expiration of the ten years' license provided in the VIIth Article of the Treaty, negotiations had been initiated between the Hudson's Bay Company and the Russian-American Company for the lease of the *lisière*, which appears to have been signed at Hamburg on February 6, 1839, and that by renewals it was terminated only on the date when Alaska was ceded to the United States, is the first to that effect that my Government has received. All the data in its possession, including the Alaska archives now in the State Department, had indicated that the negotiations for the lease had been brought about in the latter part of the year 1838, three years after the expiration of the ten years, by a note from the British Ambassador in St. Petersburg, revising the claim of the 'Dryad'—and the last record in the Alaskan archives of a renewal of it only extends it to 1865. But assuming your Lordship's information to be more accurate, we submit that both circumstances show that neither before the commencement of the lease, nor at its termination, did the Hudson's Bay Company or the British Government, which is so fully represented, regard the question now under consideration as open, or that the premises covered by the lease were in British territory: for, in the one case they would have entered upon no negotiations before the expiration of the license, and in the other would not have yielded possession without protest or murmur, but in both cases would have held on as of right.

What took place in 1857, following the appointment of a Select Committee in the House of Commons, 'to consider the state of those British possessions in North America which are under the administration of the Hudson's Bay Company, or over which they possess a license to trade,' is extremely significant to show that no one concerned on the part of the Company or the Committee had any doubt about the interpretation of the Treaty on the point now being discussed. Among the members of the Committee were Lord John Russell, Lord Stanley, Mr. Roebuck, Mr. Gladstone, and Mr. Ellice, who was a native of Canada, and a director of the Hudson's Bay Company. Chief Justice Draper, of Canada, attended its session as the representative of the Government of Canada; Sir George Simpson, Governor of the territory and President of the Company, was a principal witness. In connection with his testimonies he produced a map of the territory leased, saying, 'There is a margin of coast marked yellow on the map from 54° 40' up to Cross Sound which we have rented from the North American Company for a term of years,' and the boundary as laid down on that map conforms to the present claim of the United States, being carried around all the inlets and interior waters. The map was printed by order of Parliament, and no objection to the validity of the lease or to the correctness of the map was suggested by anybody. The lease itself was not only made with the approval of both Governments represented by the two Companies, but shortly before this Parliamentary inquiry, it had been ratified anew by both Governments. During the Crimean war, at the request of the two Companies, the territory covered by the lease was by the order of both Governments exempted from the operation of the war.

I have thus carefully reviewed all the circumstances that intervened from the negotiations of the Treaty in 1825 till the cession to the United States in 1867, a period during which, I think, we may reasonably claim that this main question was not regarded as open by either Russia or Great Britain, but that the acts of both solidly confirmed the interpretation put upon the Treaty at the beginning by Russia and ever



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since by her and by the United States, not only because of their conclusive effect, but because it is necessary to bear this prior history in mind in considering the subsequent facts relied upon by your Lordship as indicating that both parties subsequently regarded this question as open, and also to keep clearly in mind the distinction between this fundamental question and the actual demarcation in accordance with the spirit and intent of the Treaty as thus uniformly interpreted by both parties, which was always open and never could be accomplished until after a complete survey of the region through which the line ran.

Bearing these things in mind, I submit to your Lordship that it is impossible to sustain the suggestion that President Grant, in his Annual Message to Congress in December, 1872, accepted the view that 'the interpretation of the boundary articles of the Treaty was entirely an open question as to which each Government was free to urge its own views.' On the contrary, no such idea can be read even between the lines of his message. Indeed, he asserts the boundary to be an 'admitted boundary,' and only alludes to the line as being undetermined in the sense of its never having been surveyed and marked down; and the message furnishes a very strong argument in support of our present contention that the main question was not open.

It will be remembered that the award of the Emperor of Germany in the San Juan case had just then been made. The questions involved were in some respects singularly like those involved here: first, whether the water boundary described in the treaty ran through Rosario Channel or through Haro Channel; and, second, whichever channel was decided to be the one, to survey and mark it out according to the spirit and intent of the treaty. The British Commissioners had proposed that the Arbitrator should have the right to draw the boundary through an intermediate channel. The American Commissioners declined this proposal, stating that they desired a decision and not a compromise; and the submission to the Emperor was to determine whether it ran through one channel or the other, and his award had been that it was most in accordance with the true interpretation of the treaty that the boundary-line should be run through the Haro Channel; but this left still undetermined the tracing out and marking of the line in conformity with the award.

President Grant, having in his Message stated the history of the case and his satisfaction with the award, and with the prompt and spontaneous action of Her Majesty's government giving effect to it, and having already said '*The award leaves us, for the first time in the history of the United States as a nation, without a question of disputed boundary between our territory and the possessions of Great Britain on this continent,*' proceeds:—

'It now becomes necessary to complete the survey and determination of that portion of the boundary-line (through the Haro Channel) upon which the Commission which determined the remaining part of the line were unable to agree. I recommend the appointment of a Commission to act jointly with one which may be named by Her Majesty for that purpose.

"Experience of the difficulties attending the determination of our admitted line of boundary, after the occupation of the territory and its settlement by those owing allegiance to the respective Governments, points to the importance of establishing by natural objects or other monuments the actual line between the territory acquired by purchase from Russia and the adjoining possessions of Her Britannic Majesty. The region is now so sparsely occupied that no conflicting interests of individuals or of jurisdiction are likely to interfere to the delay or embarrassment of the actual location of the line. If deferred until population shall enter and occupy the territory, some trivial contest of neighbours may again array the two Governments in antagonism. I therefore recommend the appointment of a Commission to act jointly with one that may be appointed on the part of Great Britain, to determine the line between our territory of Alaska and the conterminous possessions of Great Britain. (For. Rel., U. S., 1897).'



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Is it not absolutely certain that no idea of there being any open question about the interpretation of the treaty had ever entered the President's mind? He declares it to be 'an admitted line of boundary,' and recommends, exactly as in the San Juan case upon the footing of the award, 'a joint commission to determine the line.'

President Grant's recommendation was occasioned by personal conference between the British Minister, Sir Edward Thornton, and the Secretary of State, Mr. Fish, in the preceding month, in which the former, under instructions from the Foreign Office, proposed the appointment of a Joint Commission for the purpose of defining the boundary between Alaska and British Columbia, and he reported, under date of the 25th November, that Mr. Fish stated that the President had determined to recommend in his annual message that a joint commission be appointed 'for the purpose of laying down the boundary.'

On the 23rd December of the same year Sir Edward Thornton, referring to his previous conference with Secretary Fish, transmitted to the Foreign Office a copy of the Bill introduced in Congress 'authorizing the survey and marking of the boundary' (see Canadian Session Papers 1875, No. 125, pp. 6, 7, 8). In no part of this correspondence is there any intimation that the interpretation of the treaty was in dispute. It was merely a movement to have the boundary fixed by the treaty surveyed and marked.

When gold was discovered in the Cassiar region, which was reached through the Stikine, and the passage of miners up that river ensued, it was deemed wise to have the eastern boundary of the *lisière* where it crosses that river more accurately defined, which led to the movement in 1873-74 on the part of the two Governments for a joint survey. The cost of a survey of the entire boundary being objected to, it was suggested in a conference between Sir Edward Thornton and Secretary Fish, that it would be sufficient to fix the boundary at certain named points, viz., the head of the Portland Canal, "the points where the boundary-line crosses the Rivers Skoot, Stikine, Taku, Islecat, and Chilkat, Mount St. Ellias, &c." The Legislative Assembly of British Columbia, in petitioning the Canadian Government for a survey, refers to it as "the boundary of the 30-mile belt of American territory." Dennis, Surveyor-General of Canada, to whom the matter was referred, restated the points to be determined, and named the rivers, viz., Skoot, Stikine, Taku, Islecat, and Chilkat. The Skoot was at no point nearer than 25 miles to tide water, and the points of crossing of the rivers were far above the heads of inlets into which they emptied. The survey was agreed upon, but failed because Congress made no appropriation; but it is clear that the British and Canadian authorities understood that the eastern boundary of the strip crossed the rivers named at some point above their mouths, which are at the head of inlets, including Lynn canal, and that the boundary could not therefore cross any of those inlets, which is quite inconsistent with the theory that the question was then regarded as open whether the *lisière* ran around the inlets or crossed their mouths.

In the years 1874 to 1876 questions arose as to the proper location of custom-houses of the two Governments on the Stikine River, and the point in dispute centered around the crossing of the river by the boundary-line 30 miles in a direct line from the coast. The British Minister, reciting the complaint, stated that the British custom-house was 'supposed to be within United States' territory—that is, within the 10 marine leagues from the coast.' The Privy Council of the Dominion of Canada, in moving the Governor-General to bring the subject of the survey again to the attention of the United States, recites that 'the Stikine river intersects the international boundary in the vicinity of the 57th degree of north latitude,' that is, 30 nautical miles from the coast in a direct line.

It is admitted by your Lordship that in 1873 the discussion between the two governments was entirely confined to the question of a joint survey, an indispensable preliminary to any attempt to fix the boundary, and 'never touched upon the interpretation of the treaty.' But my government cannot agree to the proposition that 'in



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the complete absence of topographical information as to the country, it was obviously impossible to discuss that question, and that it was tacitly avoided by both sides.' What could the absence or presence of topographical information as to the country have to do with the question whether the *lisière*, by the true interpretation of the treaty, ran around the inlets or across their mouths? Whether it was intended to be a continuous border of solid land, which should serve as an effectual barrier against the access of the Canadians to salt water, or should be no strip at all, but a broken series of portions of the coast, admitting Canada to full possession and enjoyment of the interior waters in many places? And how could the suggestion of Secretary Fish as to the points where the boundary described in the treaty crossed the rivers, all of which were points of considerable distance above the inlets, fail to command the attention of Her Majesty's government if it had all this time been of opinion that the upper part of these inlets was in each case in British territory? If, as your Lordship concedes, the subject of the interpretation of the treaty was in that correspondence tacitly avoided on the side of Great Britain, may we not fairly claim that the reason for silence on the part of the United States was because the positive interpretation which had been publicly and uniformly asserted by Russia and themselves for nearly fifty years had never been questioned—in other words, because there was no question? Certainly the United States never avoided it, tacitly or otherwise.

My government does not regard what took place between the two governments in 1876-77 in the case of Peter Martin as having any conclusive bearing. My reference to it in my note of the 9th August was quite casual, as to one of the very few instances in which there had been any correspondence on the subject of the boundary; but there are certain features in that case which are relevant. No one can read the notice of Secretary Fish to Sir Edward Thornton of the 10th January, 1877, and impute to him any suspicion that the interpretation of the treaty definition of the boundary on the point now under consideration was open, or that anything was left undetermined except the exact location of the admitted boundary-line. He says:—

'The absence of a line defined and marked on the surface of the earth as that of the limit or boundary between the two countries cannot confer upon either a jurisdiction beyond the point where such line should in fact be—that is, the boundary which the treaty makes the boundary. Surveys make it certain and patent, but do not alter rights or change rightful jurisdiction.'

It is quite true that the Minister of Justice recommended that the release of Martin be put upon the ground of the conveyance of the prisoner through American territory. But the British Chargé, in his note to Mr. Fish, did not state the ground upon which the release was ordered; and the proceedings seemed to involve a tacit concession on the part of Great Britain that the place of the assault was in American territory. The demand for his release was upon that ground, and the British Minister so understood it. In examining the Canadian documents in relation to the case, it appears that the surveyor who was sent by the Canadian Surveyor General to visit the locality, reported four months before the release of Martin that the assault for which Martin was tried was committed in the territory of the United States 13 miles from the mouth of the Stikine river; and the Minister of Justice, to whom the case was referred for investigation, reported to the Privy Council that the assault was upon American territory, and no suggestion to the contrary was made by any one on the part of Great Britain.

In my note of August 9 I made no reference to Mr. Bayard's note to Mr. Phelps of November 20, 1885, and to the correspondence which that note initiated. This omission was not from overlooking that note and correspondence, but because a careful reading of it had satisfied me; and now that Your Lordship has brought it up, I submit to your candid judgment that Mr. Bayard did not there take the view that the interpretation of the boundary articles of the treaty was an open question, but only that the demarcation of the line was undetermined and was full of difficulties in the



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then state of topographical knowledge. Of course, Mr. Bayard in that note made no claim that the interpretation of the treaty as regards any particular part of the boundary line was no longer open, for nobody, so far as we can discover, had up to that date claimed that it was open. Certainly no one on the part of Her Majesty's Government had done so.

Undoubtedly Mr. Bayard did point out in that note that 'no question concerning the true location of the line stipulated in the treaty had ever arisen between Great Britain and Russia prior to the cession of Alaska to the United States.' But in the same paper and in the same connection he had already said, 'It is certain that no question has arisen since 1867 between the Governments of the United States and Great Britain in regard to this boundary,' thus covering the whole period from 1825 to 1885.

In view of these emphatic declarations, my Government is at a loss to understand how he can be held to have sustained the view that at the latter date the interpretation of the treaty as to the boundary was an open question between the two governments.

All the statements of Mr. Bayard and Mr. Phelps in the correspondence that followed must be read in the light of these declarations and the view of the object at which they were aiming, viz., to obtain, not an arbitration to interpret the treaty, but a Joint Commission which should make a survey of the line stipulated by the treaty, or, as Mr. Bayard afterwards limited it (in his subsequent instruction of March 19, 1886, to Mr. Phelps), to 'an agreement for a preliminary survey of the Alaska boundary with a view to the discovery of such natural outlines and objects as may be made the basis for a future formal convention for the survey of the boundary line.'

He was deeply impressed with the extreme difficulty and enormous expense of a survey of the boundary line—difficulties and expense which we think have been very greatly reduced by the report of the Joint Commission appointed in 1892 and the maps prepared by that Commission—but all that Mr. Bayard and Mr. Phelps said may be read in vain for any indications of a doubt in the mind of either, whether the *lisière* was a continuous and solid strip of land running around the inlets and excluding Great Britain from access to the sea in every part of its length, or a congeries of broken strips interrupted at the mouth of every inlet and admitting her to exclusive possession of all parts of every inlet above a point crossed by a line drawn from the crests of the mountains nearest to the coast. The difficulties of which Mr. Bayard treated at great length were the same which Mr. Fish and the experts of both Governments then consulted had encountered in 1872, but neither then nor in 1885 did they suggest a divergence of views as to the interpretation of the treaty.

When the Earl of Iddesleigh sent the Canadian map to Mr. Phelps with his note of August 27, 1886, and felt called upon to disavow the correctness of the line of boundary as marked on it, he raised no question about the interpretation of the Treaty of 1825—certainly none as to whether the *lisière* ran around the inlets, so as to keep Canada at all points 30 marine miles from salt water—but pointed directly and exclusively to the doubt which had always existed as to the exact location of the boundary line, the eastern edge of the *lisière*, occasioned by the alternative clauses of the treaty defining it by parallel mountain summits, or in their absence by the 10 leagues. He says that the boundary-line shown on the map 'is merely an indication of the occurrence of a dividing line somewhere in that region;' and he goes on to explain what he means by that and why no weight could be attached to it, inasmuch as the treaty 'which defines the line makes its location depend on alternative circumstances—the occurrence or non-occurrence of mountains, and, as is well known to all concerned, the country has never been topographically surveyed.' Surely, considering that at that time, more than sixty years since the treaty, the question now raised had never been suggested, nor any question about the meaning of 'the coast' or 'the sinuosities of the coast,' the phrases employed in the treaty, he could not have intended covertly to raise it for the first time by the languages used, nor could he have believed that our government would so understand that language, which by the ordin-



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ary rules applicable to diplomatic correspondence, or to any correspondence, must be limited to its obvious meaning ; for after sixty years of silent acquiescence and occasional active concurrence in the interpretation publicly asserted by Russia and the United States, if he intended to raise such a radical question to the contrary, he should have done it in unmistakable terms. The Earl of Iddesleigh's language is in exact conformity with the inscription upon the map itself, which he inclosed, and which doubtless suggested to him the caution which he gave.

'The boundary between British Columbia and Alaska, as shown upon this map, is taken from a map of British Columbia published in 1871, under the direction of . . . . Surveyor-General for the province of British Columbia; but no steps have yet been taken by the Canadian government to verify what degree of accuracy may be attached to the boundary thus laid down.'

The same observations apply in full force to the language quoted by your Lordship from the memorandum given to Mr. Secretary Bayard by Sir L. S. Sackville West in September, 1887, There was no more reason why the United States' government should take exception to this declaration than to that of Lord Iddesleigh, already discussed.

In April, 1886, Sir L. West had been instructed by Lord Rosebery to inform the government of the United States that Her Majesty's government are prepared to take part in the preliminary investigation of the boundary question. And Lord Rosebery had notified Mr. Phelps that he did not propose to move further in the matter until he knew what action was taken towards an appropriation by congress.

In the meantime, Lieutenant Schwatka having been sent to Alaska, not by the United States' government, but by General Miles, then commanding the Department of the Columbia, and not to make any survey, but to gather information for military purposes, had made his report, and neither the report nor the map which accompany it delineating his route disclose any boundary survey on his part or the fixing of any points for the boundary. His report, however, casually stated that 'the country beyond Perrier Pass,' which by his map appears to be more than 20 leagues beyond the head of Lynn canal, 'lying in British territory, lessens the interest of this trail beyond the pass to the military authorities of our government.' This remark, which from the context is shown to be merely incidental to the narrative of his journey, has no further significance than an assertion on his part that the Kotush mountains are situated in British territory.

And Sir L. West, in his memorandum, so far from raising any question about the interpretation of the treaty, or claiming that the question now presented was open, expressly declined to raise any discussion even in regard to the position of the boundary, but merely called attention to Lieutenant Schwatka's statement, so that no prejudice might come from silence about it. There is no indication that either he or Lord Rosebery had any idea that any question of interpretation existed.

I venture to suggest that Your Lordship may have inadvertently, and without full consideration of the circumstances, laid too much stress upon Dr. Dawson's letter of February, 1888, which comes next in order of time. Your Lordship draws the conclusion that 'Dr. Dawson, during the sittings of the Joint High Commission of 1888, made it distinctly clear that *Her Majesty's government* claimed that the boundary should, in accordance with the terms of the treaty, cross all narrow waters that were of such width as to be within territorial jurisdiction,' and 'that United States' citizens who have settled recently at the head of the Lynn canal have done so with the full knowledge,' as given in that letter, 'that they were settling in disputed territory.'

It appears by the documents transmitted to congress by President Cleveland, the 2nd March, 1889, that Secretary Bayard reported that 'during the session of the Fisheries Conference of 1887-88 in Washington it was suggested that an informal consultation between some person in this country possessing knowledge of the question in dispute and a Canadian similarly equipped might tend to facilitate the dis-



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covery of a basis of agreement between the United States and Great Britain upon which a practical boundary line could be established.

Mr. Bayard then proceeds to state that to this end several conferences were held between Professor Dall, of the United States' Geological Survey, and Dr. Dawson, an eminent Canadian authority, but without any other result than that each of these gentlemen had given his account of these conferences—the former to the Secretary of State, the latter to Sir Charles Tupper—which, together with other documents including a letter of Dr. Dawson to Sir Charles Tupper on the boundary question, and memorandum of Professor Dall on the same subject, with maps, were submitted. Professor Dall, in his report of the interviews, says:—

“It was mutually announced and agreed that the meeting was entirely informal; that neither party had any delegated authority whatever,” and it is quite clear that they had no governmental authority whatever on either side. “It was thought that if Dr. Dawson and myself could unite in recommending some plan as practicable, that opinion or plan would be entitled to some consideration.” These conferences were not held “during the sittings of the Joint High Commission of 1888,” and this, the first suggestion that has come to our knowledge “that the boundary should, in accordance with the terms of the Treaty, cross” any waters, was not presented before the Commission, but in this “informal meeting” where “neither party had any delegated powers whatever.” It appears by Dr. Dawson's letter, upon which your Lordship relies, that he did not put forward this idea as originally his own, or one for which he was responsible, or as a claim in any sense of Her Majesty's Government, but as the view of a Canadian land surveyor, General Cameron, which he says in his letter to Sir Charles Tupper “may be substantially adopted,” and he courteously furnishes Professor Dall with a copy of the letter as stating clearly General Cameron's views. It was wholly immaterial whether Dr. Dawson adopted General Cameron's views or not; but Sir Charles Tupper, who was then in Washington, and was keenly alive to the importance of everything bearing on the Alaska boundary was in no mood to adopt them. He appears purposely to have refrained from doing so; for in communicating to the Secretary of State a copy of this letter of Dr. Dawson, he refers to it as explanatory, not of the views of himself, or of the Canadian or the Imperial Government, but of Dr. Dawson's own views.

I annex a copy of Sir Charles Tupper's letter.

Professor Dall describes them as “some very surprising claims” and as “the singular hypotheses regarding the boundary line which have been emitted by General Cameron of Canada, and which are formulated in the accompanying letter to Sir Charles Tupper.” And Mr. Bayard refers to them as “certain views of General D. R. Cameron, as submitted in the letter of Dr. Dawson.” Certainly, therefore, Her Majesty's Government made no such claim. And if there was any purpose on the part of the Canadian Government of making it, such purpose was very studiously and successfully disguised. I think it will appear that neither the Canadian nor the Imperial Government adopted or put forward this claim until after the Protocol of the 30th May, 1898.

If the views of Her Majesty's Government as to the boundary were fully stated at the conference held in Washington in February, 1892, with members of the Canadian Cabinet and the British Minister, and a suggestion was submitted for a reference of the question to arbitration, it does not appear of record in the Department of State, and no information of such a proposition is in its possession. No Protocol of the conferences was made, as it was understood in advance that they were to be of an informal and private character: but Secretary Blaine submitted to the President a report of some length in regard to the February conference, as did Mr. Foster with respect to the second conference in June—both of which were transmitted to Congress, and published (Senate Ex. Doc. 114, fifty-second Congress, first Session, pp. 3—43).

These conferences were brought about because of the protests of the Canadian Government against a Reciprocity Treaty with Newfoundland: and in the preliminary



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arrangements for the meeting, while a number of subjects were suggested for consideration, *the Alaska boundary was not mentioned*. Almost the entire time was taken up with commercial questions, of which Mr. Blaine makes full report, and very briefly refers to other questions, among them 'a commission to fix the boundary separating Alaska from British territory,' but there is no intimation of so serious a proposition as an arbitration of that question.

I am not able to perceive, therefore, that a proposition on the part of the British representatives, assuming it to have been made at such an informal conference in the terms quoted by your Lordship, but which the American representatives refused to consider, can be regarded as raising or opening the question of the interpretation of the treaty now under consideration. Undoubtedly, if that suggestion had been adopted and carried into an executed agreement, it might have been possible under it to raise before the tribunal any question whatever; but as a rejected proposition in the form stated it opened nothing, certainly not the question of interpretation of the treaty raised by Canada's present claim.

It is suggested by your Lordship that the Treaty which was soon afterwards signed by the secretary of State, Mr. Foster, and the British Chargé, Mr. Herbert, was, and was expressed to be, 'with a view to the ascertainment of the facts and data necessary to the permanent delimitation of said boundary line in accordance with the spirit and intent of the existing treaties'; and that it was 'agreed that as soon as practicable after the report of the commission shall have been received, they will proceed to consider and establish the boundary line in question'. These facts and data were to be the result of the surveys of scientific experts, and no inference can be drawn from this convention that there existed any divergence of views as to the interpretation of the treaty of 1825, especially as to the point now under consideration. It brought no such claim to the attention of the American Government. What was postponed, to be taken up after the reports of the commission should come in, and upon the facts and data derived from such reports, was the consideration and establishment of the boundary line. And it is now believed that with the light thrown upon the topography of the country by the elaborate series of maps on which the results of the joint survey were embodied, if the question now raised whether the *lisière* runs around the inlets or across their mouth were decided, the actual location of the boundary in either view could be easily made by agreement or by the present Joint High Commission.

So far as the records of the State Department disclose, the first proposition submitted by the British Government for an arbitration of the Alaska boundary was contained in the note of the British Ambassador, Sir Julian Pauncefote, to Secretary Sherman, which it now appears by your Lordship's despatch he was directed to write before Her Majesty's Government had received the maps referred to. It is true that in this note he refers to 'the wide divergence of views existing', but when he comes to explain this by particularizing the line respecting which his government is most concerned, he says:—

'The great traffic which is now attracted to the valley of the Yukon, in the Northwest Territory, by the recent discovery of gold in that region, finds its way there from the coast principally through certain passes at the head of Lynn canal, and it becomes more important than ever for jurisdictional purposes that the boundary, especially in that particular locality, should be ascertained and defined.'

This was the last statement of the views of the British Government before the creation of the Joint High Commission, and it developed the fact that up to that time the divergence now so much emphasized was more apparent than real, as it recognized that the line in dispute about the head of Lynn canal was in the neighbourhood of the passes. And this is the case in every instance cited in your Lordship's despatch where the British Government has made any declaration of its views. I have already commented on the Earl of Iddesleigh's letter to Mr. Phelps in 1886. In 1887-88 when the British and American customs officials came into conflict on the Stikine River,



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and Sir Edward Thornton submitted a proposition for a settlement, the question was whether the line in accordance with the treaty should be drawn across the river where the Canadian surveyor had placed it 20 miles from tide water, or 30 miles. In 1872, when the effort was made for the creation of a commission to mark the boundary, it has been shown that there was a concurrence of opinion between the two governments that the line should be drawn across the rivers named, among which was the Skoot, which at no point was less than 25 miles from tide water. It is clear that in every instance when up to the creation of the Joint High Commission the British Government has made any representation to the Government of the United States respecting the boundary, it has related to the eastern or interior line of contact with Canadian territory, either on the rivers or in the mountain passes, and that whatever uncertainty or difference of views was manifested arose from the want of precise knowledge as to the topography of the country, and did not concern the interpretation of the treaty. It is also clear that at no time previous to August 3, 1898, has the British Government intimated to the Government of the United States a claim to the waters of the inlets extending into the strip of mainland set off to Russia by the treaty of 1825.

Certainly, until such claim was made, and the rights of the United States under the treaty in the territory now disputed were challenged, there was no occasion for them to refer to the subject of possession, occupation, or political control in any correspondence with Great Britain; but we maintain that possession, occupation, and political control of the territory now disputed were exercised continuously from 1825 to the present time by Russia and the United States in succession, and such exercise is in its nature claim of title.

I have refrained in this communication from importing any extraneous considerations and arguments in support of an interpretation of the Treaty of 1825, but have limited it to what seems to me to be cogent and conclusive grounds for the assertion that its interpretation on the point presented has not been open in the long period from 1825 to 1898. It is true that these views would be entitled to equal consideration before a tribunal appointed to interpret the treaty and settle the boundary, but the uniform acquiescence and occasional concurrence of one party in an interpretation openly proclaimed and acted on by the other seems to be a complete answer to the claim that that interpretation continues open.

If the British or Canadian government had at any time desired to enter a protest against the claim of the United States, abundant official data existed upon which such a protest might have been based. In 1867, immediately after the signing of the Treaty of Cession, the Department of State issued an official map of the territory of Alaska, on which the international boundary was traced, carrying it well beyond the sources of the streams emptying into Lynn canal; and this line has been accepted in all the cartographic publications of our government since that date. In 1883 the Secretary of State sent to the British minister in Washington, at his request, copies of the annual reports of the United States' Coast and Geodetic Survey for 1874 and for other succeeding years, containing boundary limits of a similar character.

The census publications of 1880 and 1890 not only contained a similar map, but also an enumeration of the Indian tribes of the territory, including those inhabiting the country about the head of the Lynn canal. Many other publications of a similar character might be cited. Her Majesty's government, however, held its peace during the time of these publications, and entered no claim to any part of the Lynn canal until after the protocol had been signed in 1898, providing for a Joint High Commission to adjust unsettled Canadian questions.

The first presentation by Her Majesty's government of the present claim of Canada was made in the instructions issued by the Foreign Office to the British members of that commission, bearing date the 19th July, 1898, which was received by the Secretary of State on the 3rd August in that year. During the conferences of that commission, the American delegates asserted that no such claim had ever been put forward by the British government previous to the creation of the commission, and the



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assertion was not called in question. Chairman Fairbanks, in his letter to Lord Herschell of the 14th February, 1899, referring to this claim, used this language:—

‘Our first advices on this subject were received at your hands since our sessions began at Quebec. . . . If the views you now present have been urged upon the attention of the United States at any time prior to the original protocol (30th May, 1898), we shall esteem it a favour if you will be good enough to direct us to the fact and date; further, we shall be pleased if you will advise us at what time since 1825 the British government made claim on either Russia or the United States to any territorial rights round the upper part of Lynn canal.’

To this Lord Herschell, in his letter of the 15th February, 1899, replied:—

‘The statement that the views of the British government had not been made known till that time (the assembling at Quebec the 23rd August, 1898) is erroneous. The instructions given us by the British government made it perfectly clear that the upper part of the Lynn canal was claimed as British territory. . . . A copy of these instructions were sent on the 1st August, 1898, to the United States’ Secretary of State.’

To this letter Chairman Fairbanks, under date of the 16th February, 1899, responded as follows:—

‘It is quite true, as stated in your letter of yesterday, that the instructions of your government were sent to our government a few days before the Quebec meeting, but they did not, in fact, come to the attention of the commissioners until they assembled at Quebec. You will no doubt recall the observation made by General Foster, during your presentation of the British case upon the boundary, that the view then advanced by you respecting the head of the Lynn canal was the first distant statement of the British claim. I do not recall that you seriously disputed it.’

Thus the exact *punctum temporis* of the first assertion of this claim of Canada by Her Majesty’s Government is fixed. Your Lordship says that “the question immediately under discussion is whether or not the dispute as to the boundary should be referred to arbitration, and it is difficult to understand why the length of time during which the rival claims to disputed territory have been matters of controversy should form an element to be taken into consideration in that connection.” But I may be pardoned, at the expense perhaps of painful repetition, for saying that the precise question under immediate discussion is not whether there should be an arbitration, but assuming both sides to be so disposed, whether the terms and scope of the Venezuelan Arbitration, where the arbitrators were left free to wander over the whole breadth of territory which had been the subject of constant and open dispute for more than a century, and to make the boundary which they could not find, should be applied to this case, where a line fixed by a Treaty in 1825, a plain interpretation of which has been uniformly and publicly asserted by one party without question or protest by the other for seventy-three years, is at the end of that time assailed and a new line claimed—and where the one claim or the other must be right—leaving no middle ground on which to create a boundary in the place of the one fixed by the Treaty.

I am sure that these views, offered at your Lordship’s suggestion, will receive consideration at the hands of Her Majesty’s Government.

I beg to assure your Lordship that the Government of the United States is under no misapprehension as to the nature and scope of the proposal for arbitration submitted by Her Majesty’s Government. If I dwelt almost exclusively in my note of the 9th August, as I have done in this communication, “upon the boundary in the neighbourhood of the Lynn canal,” it was because I took that as the most striking example of all the inlets, and because I regarded the question whether the boundary of the Treaty runs around them or across their mouths as the most important and as the one which keeps us so far apart. For, if this question were once solved, neither the question of the water boundary, described in the Treaty as “ascending to the north along the



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channel called Portland Channel," nor the actual demarcation of the land line by mountain crests or by the 10-league measure would, I think, be difficult to settle either by convention or by the aid of the Joint High Commission. While the claim of Her Majesty's Government is not stated with absolute distinctness in your letter of instruction of the 19th July, 1898, it was to be inferred from its perusal that the British Commissioners would maintain that under the Treaty Great Britain should at least be entitled to a portion of Lynn canal. And in the conferences of the Commission a map was submitted by them (doubtless the one referred to by Your Lordship) with a boundary line traced upon it setting forth the British claim, which developed a divergence of views as to the line, not only in the region of the Portland canal, but along the entire mainland of the *lisière*. It is therefore distinctly understood that the British proposal of arbitration relates not only to the entire line of the strip of territory from Portland canal to Mount St. Elias on the mainland, but that it embraces in the submission the British claim to a portion of all the inlets extending into the mainland, and to the greater part of Lynn canal.

I need not repeat what I said in my note of the 9th August, as to the necessity of excepting from the perils of any arbitration settlements made by American citizens in good faith under the authority and actual jurisdiction of the government of the United States before the claim now made on the part of Canada was ever presented by Her Majesty's Government. Such necessity and the injustice of involving them in an arbitration are too obvious.

I have, &c.

(Signed) JOSEPH H. CHOATE.

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Inclosure in No. 6.

BRITISH LEGATION, THE ARLINGTON, WASHINGTON, FEBRUARY, 11, 1888.

DEAR SIR,—In supplement of the Alaskan maps by Dr. Dawson, which I presented to you yesterday, I now beg your acceptance of the accompanying copy of Dr. Dawson's letter of the 7th instant explanatory of his own views on the subject of the British-Alaskan boundary.

Believe me, &c.

(Signed) CHARLES TUPPER.

The Honourable T. F. Bayard,  
Secretary of State.

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*From Mr. Chamberlain to Lord Minto.*

*Canada.*

DOWNING STREET, February 12, 1900.

MY LORD,—I have the honour to transmit to you, for any observations which your Ministers may have to offer thereon, copy in triplicate of a note from the United States Ambassador at this Court as to the terms on which the Alaska boundary question should be referred to arbitration.

Mr. Choate to F.O., February 22, 1900.

2. This note contains the reply of the United States Government to the arguments put forward in the despatch which was addressed by the Marquis of Salisbury to Mr. Tower on October 14 last, and of which a copy was inclosed in my secret despatch of the 24th of the same month.

I have, &c.,

(Sd.) J. CHAMBERLAIN.

Governor General

The Right Honourable

The Earl of Minto, G.C.M.G.,

&c., &c., &c.



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EXTRACT from a Report of the Committee of the Honourable the Privy Council, approved by His Excellency on the 6th December, 1900.

The Committee of the Privy Council have had under consideration a despatch, hereto annexed, dated 12th February, 1900, from the Right Honourable Mr. Chamberlain, Secretary of State for the Colonies, transmitting copy of a note from the United States Ambassador at the Court of St. James, as to the terms on which the Alaska boundary question should be referred to arbitration.

The Committee have also had under consideration a report, hereto attached, upon the above-mentioned despatch, by the Honourable Sir Louis Davies, to whom the matter in question was referred.

The Committee concur in the said report of Sir Louis Davies and advise that Your Excellency be moved to transmit a certified copy of this minute and the said annexed report to the Right Honourable Her Majesty's Principal Secretary of State for the Colonies.

All which is respectfully submitted for Your Excellency's approval.

JOHN J. MCGEE,

*Clerk of the Privy Council.*

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*To His Excellency the Governor General in Council.*

The undersigned, to whom was referred the despatch of the United States Ambassador to the Marquis of Salisbury, dated 22nd January, 1900, has the honour to express the satisfaction with which Your Excellency's advisers have received Mr. Choate's assurance that his government is not averse to a reference of the main difference between Great Britain and the United States in respect of the Alaska boundary to the adjudication of an independent tribunal, but rather contemplates the probability of such a mode of settlement of this long pending controversy. The undersigned concurs with Mr. Choate in thinking that what the Ambassador regards as the paramount issue, namely, whether the line should be drawn across inlets or round their heads, can best be decided by this means. He does not, however, share Mr. Choate's view that the particular course which the line is to take when the above question has been settled can be satisfactorily determined by a joint survey. The undersigned would point out that a joint survey has already been made, and that if the differences between the two governments could not be settled by the aid of the very complete maps thereby afforded, he does not see much prospect of a fresh survey achieving a more definite result. It appears to the undersigned that what Mr. Choate terms 'minor or secondary' though 'highly important' questions, namely, the exact location of the boundary line and its precise distance from the coast, are analagous to those involved in the main issue and can only be determined by a similar process. To illustrate his meaning the undersigned would suppose that the question of inlets has been decided, and a joint survey despatched to lay down the boundary in conformity with the provisions of the Treaty of 1825, which prescribes that the line shall follow the summit of the mountains situated parallel to the coast. The British surveyors would naturally interpret this to mean the summit of the mountains nearest the coast, while it is possible that the United States surveyors might contend for the highest range. How could the point be decided. Yet upon the decision would depend the possession of part of the town of Skagway, even supposing the ownership of the heads of inlets were decided adversely to the British contention. Again, if there should be a break in the mountain range which it is decided to follow, should the line cross the break parallel to the coast or should it run at right angles back from the coast until the ten league limit is reached. Controversies over these points, and others of a similar character, the least of which might turn out to be of far-reach-



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ing importance, would, it is to be feared, arise, and it is scarcely to be expected that surveyors in the field could reach an agreement upon them, nor indeed, would it be expedient to allow them such latitude. It appears to the undersigned that Mr. Choate's observations with regard to the question relative to the heads of inlets, namely, that of interpretations regarding it which have been presented by Great Britain and the United States respectively, 'one or the other is right and can and should be ascertained and determined so to be to the exclusion of the other' are equally applicable to many occasions of difference which surveyors sent to lay down the boundary would encounter. For these reasons the undersigned is of opinion that all questions which depend for their solution upon the interpretation of the treaty should be simultaneously referred to arbitration, to determine the true meaning of that instrument, and this, not merely with regard to the Lynn canal or any other particular point, but in respect of the whole line, throughout its entire length, from the southernmost point of Prince of Wales Island to Mount St. Elias. What is desired by both governments is the termination of this dispute, and in no other way, in the opinion of the undersigned, can it be satisfactorily and permanently settled.

Mr. Choate's objection to the application of the Venezuela Treaty to the adjustment of the present controversy appears to be directed against the provision for compromise which that arrangement affords, and the latitude given to the tribunal constituted under it. The undersigned agrees with the view expressed in Lord Salisbury's despatch of the 14th October, 1899, that the circumstances of the Alaska boundary controversy are such as to warrant an unqualified submission to an impartial tribunal, and it was solely with the desire to meet the objections of the United States representatives that the British members of the Joint High Commission of 1898-9 proposed to allow that continued adverse possession should be recognized and full regard had to the equities of the case. With this object in view it appeared to them that the Venezuela Treaty offered a convenient and suitable precedent. Accordingly they proposed arbitration on those lines, but the Canadian Government is not wedded to a particular formula and is prepared to consider any reasonable modification of the rules suggested (not inconsistent with finality of decision) which the United States may consider the special circumstances of the case to call for. Towards such questions as the composition of the tribunal and its organization, as well as the terms of reference. Your Excellency's ministers, with the qualification above mentioned, have adopted no fixed attitude nor have they declined to reconsider the original proposal of the British side of the Joint High Commission, which at the same time, they conceive to be eminently fair to the United States.

But while the Canadian Government is thus prepared to acquiesce in every concession compatible with the maintenance of its self-respect, it must exclude from that category the stipulation contained in the last paragraph of Mr. Choate's letter, to the effect that all settlements made by American citizens in the disputed territory under the authority of their Government, up to a very recent period, shall remain the property of the United States. Mr. Choate has all along taken the ground that the only material question in this controversy is that which involves the ownership of the heads of inlets in general, and of the Lynn canal in particular. That canal derives its present importance from the fact of its forming the natural gateway to the gold-bearing regions of the Canadian interior, which are accessible by sea in those latitudes through the ports of Dyea, Skagway and Pyramid Harbour. The valleys in the rear of these ports are the only known avenues of approach to the interior which come down to the Lynn canal, and are consequently the measure of its value. Their ownership must, therefore, constitute in the view of the United States Government the chief object of the arbitration. Now, there cannot be a doubt that the proposal of the United States plenipotentiaries at the recent meetings of the Joint High Commission, here renewed by Mr. Choate, to except from the 'perils of any arbitration all towns or settlements on tide water settled under the authority of the United States and under the jurisdiction of the United States at the date of this treaty' was put forward with the object



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of securing Dyea, Skagway and Pyramid Harbour, for they are the only settlements on tide water leading to the interior that can possibly be embraced by the definition. So Mr. Choate's reservation amounts to this—that the United States Government will agree to arbitration only on condition that the principal objects of the reference shall be theirs in any event, and that Great Britain shall so covenant before the parties go into court. Your Excellency's advisers cannot doubt that Her Majesty's Government will never consent to any such arrangement.

This extraordinary proposal is based on the assumption that the settlements at the head of the Lynn canal were established under the authority of the United States prior to the announcement of any claim to the territory in question on the part of Great Britain. So confident is Mr. Choate of the soundness of this contention, that several times throughout his despatch he emphasizes it by expressly including Canada, as distinct from the Mother Country, in his charge of having said or done nothing prior to 1898 to indicate her claim. This assertion has been dealt with in a memorandum prepared by the undersigned a few months ago, and printed confidentially for the use of the Colonial Office. It would serve no good purpose to recapitulate here in detail the proofs therein advanced tending to show that for the last thirty years the Canadian Government omitted no opportunity of publicly asserting its claim to the territory in dispute. It will be within Your Excellency's recollection that ten years prior to the meeting of the Joint High Commission of 1898, the High Commissioner for Canada, at the instance of Sir John Macdonald, then Prime Minister, lodged a protest, through the Secretary of State for the Colonies against a rumoured attempt on the part of the United States Government to exercise sovereignty in the vicinity of what is now the town of Skagway, on the ground that the territory in question formed part of Her Majesty's Dominions. The undersigned is aware that the force of this protest was to some extent weakened in the course of its transmission to the United States Government, but he submits that the clearness and vigour of the language employed to affirm the 'well based contention' on the part of Canada that the heads of inlets 'are within our territory' and consequently form 'part of Her Majesty's Dominions,' leave no doubt as to what the Canadian Government's contention was on this point in the summer of 1888.

Mr. Choate suggests that too much weight has been given to Dr. Dawson's letter of the 7th February, 1888, laid before the Fisheries Commission of that year, in which the same contention is advanced. He argues that the meetings between that gentleman and Professor Dall were wholly informal, that neither possessed any delegated authority whatever, and that their opinions could not be held to commit anybody but themselves. 50th Congress, 2nd Sess., Senate, Ex. Doc. No. 146.

The undersigned submits that while it is true the conferences between Messrs. Dawson and Dall were informal, these gentlemen were experts specially selected by their respective governments, and he maintains that their views must, therefore, be held to be those of the governments which they represented. That this was so understood at the time is evident from the map (No. 16) which accompanies the reports of both experts, submitted to Congress by President Cleveland on the 2nd March, 1889. That map is a reproduction of one prepared in Ottawa for the purposes of the Conference of 1887-8. As originally published, it showed no boundary lines, but upon a few copies lines were drawn in ink by Dr. Dawson showing: (1) a boundary line as given on the United States Coast Survey map of Alaska, 1884; (2) a boundary line approximately following the summits of mountains parallel to the coast, in presumed conformity with the text of the Convention of 1825 as understood by the Canadian Government; (3) one of the conventional lines discussed during the conferences and referred to in the printed correspondence between Dr. Dawson and Sir C. Tupper which the latter laid before the Commission. It was not possible to draw the second conventional line, as this depended upon geographical details not determined at the time. A note upon the face of the map states that the line from the United States Coast Survey map 'disregards both the treaty reference to mountains and that to the ocean coast.'



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A copy of the lithographed map, with the lines and notes above referred to, was supplied to Professor Dall, and is reproduced in fac simile as Map No. 16 above referred to.

That the line following the mountains parallel to the coast, crossing all the larger inlets, must at the time have been accepted as embodying the Canadian view of the meaning of the treaty of 1825 is shown by the addition by the United States authorities to the fac simile (at the top and outside the border of the map) of the words—'Dawson's Canadian Map, 1887, showing conventional lines *proposed by Canada*.' A copy of this map as originally prepared, and also a copy with Dr. Dawson's additions both of which were published by the United States Government and submitted to Congress are appended to this memorandum.

In these maps see Maps Nos. 15 and 16, in "Senate, 2nd Sess., 50th Congress, Ex. Doc. No. 146."

Mr. Choate says of the meetings between Messrs Dawson and Dall that they were not held during the sittings of the Joint High Commission of 1888. An examination of the protocols of this commission discloses that on the 9th January, 1888, Mr. Chamberlain suggested that Dr. Dawson and Professor Dall should meet and endeavour to agree upon some definite suggestions for the consideration of the conference. On the 23rd January Mr. Bayard concurred in this suggestion, and on the 30th it was arranged that Dr. Dawson should be summoned by telegraph. On the 2nd February, Mr. Chamberlain announced that Dr. Dawson had arrived at Washington, and Mr. Bayard informed the conference that the necessary arrangements would be made at once for him to meet Professor Dall. On the 7th February Mr. Chamberlain reported to the commission that Dr. Dawson and Professor Dall had not made any progress on the question of the Alaska boundary. The commission sat on 2nd, 3rd, 6th and 7th February. Obviously therefore Mr. Choate is under a misapprehension when he states that the conferences between Messrs. Dall and Dawson were not held during the sittings of the Joint High Commission. Mr. Choate's inference that Sir C. Tupper dissociates himself from Dr. Dawson, because in the former's note of transmission he refers to the latter's views as 'his', i.e., Dr. Dawson's 'own', appears to the undersigned to be based upon a misconception of Sir C. Tupper's meaning. Bearing in mind that on the same day on which Dr. Dawson's letter was written, Mr. Chamberlain reported to the conference that the two experts had failed to come to any agreement, it is not surprising that Sir C. Tupper should allude to Dr. Dawson's views as 'his own', meaning thereby, his own, not as distinct from those of the government which he was there to represent, but from those of his fellow expert with whom he could not reach any agreement. They were his individual views in the sense that they were not shared by Professor Dall. Those views were known to the government of which Sir C. Tupper was a member, before Dr. Dawson was summoned to Washington. If the Canadian government was not in accord with them it is scarcely likely that he would have been selected to confer with the American expert, nor is it probable that Sir C. Tupper would have placed them before Mr. Bayard without, at any rate, some distinct and explicit disavowal of responsibility for them. The suggestion that Sir C. Tupper was in no mood to adopt General Cameron's opinions on the subject of the Alaska boundary is, the undersigned is in a position to assure Your Excellency, quite at variance with the fact. The undersigned ventures to remind Her Majesty's Government that it was at the instance of Sir C. Tupper, at that time High Commissioner for Canada, that General Cameron was selected by the Secretary of State for the Colonies to investigate and report upon this question of the Alaska boundary. That Sir C. Tupper in the year 1888 attached great weight to General Cameron's views on the subject of the Alaska boundary and that he entirely concurred in protesting against any attempt on the part of the United States to disregard Canada's claim to the heads of inlets, is apparent from his letter to the Colonial Minister, dated 1st August, 1888, in which he fortifies the protest of the Canadian Government by a memorandum from General Cameron's pen.



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The undersigned would invite the attention of Her Majesty's Government to the message of the President of the United States, transmitting these reports and maps of Dr. Dawson to Congress, and to the memorandum of his Secretary of State which accompanied them, in which Mr. Bayard expresses the opinion that these documents are "of value as bearing upon a subject of great international importance and should be put in shape for public information."

50th Congress, 2nd Session, Senate Ex. Doc. No. 146.

The undersigned submits that in thus giving effect to this suggestion the United States publicly acquainted its people of Canada's claim to the heads of inlets more than eight years before anything in the nature of settlement was begun at the head of the Lynn canal, for, as the undersigned has already shown in his memorandum above referred to, beyond a few trifling acts of occupation on the part of private individuals, at periods separated by considerable intervals of time, no settlement was attempted in those localities until the mining rush to the Klondike in the spring of 1897. In the light of these circumstances Her Majesty's Government will perceive how impossible it would be for Canada to assent to any condition similar to that put forward by Mr. Choate in his concluding observations.

The undersigned confesses to some surprise at Mr. Choate's statement to the effect that the United States Government is not aware that at the conference held in Washington in February, 1892, the Canadian Ministers proposed "that a reference to some impartial authority be made by Great Britain and the United States for the purpose of ascertaining and deciding finally the true boundary, regard being had to the treaties relating to the subject, and likewise to the case which may be presented by either government and to the testimony which may be adduced as to the physical features and conditions of that country." The minutes of the proceedings of this conference, signed by the Canadian delegates and concurred in by Her Majesty's Minister to the United States, confirm the accuracy of this statement. These minutes, which were published by order of the Canadian Parliament in the sessions of 1892 and of 1893, also record that on the 12th February, 1892, "the various contentions relating to the boundary were then explained," thereby indicating that the existence of a divergence between the views of the respective governments as to the true meaning of the treaty was recognized at that date, and that each was acquainted with the other's claim.

Can. Sess. Paper 1892, No. 37, page 3. Can. Sess. Paper, 1893, No. 52, page 6.

In submitting these views for the information of Her Majesty's Government, the undersigned has the honour to remind Your Excellency that in the memorandum prepared by him in October, 1899, for the use of the Colonial Office, to which he has already referred, he detailed all the facts in connection with this controversy at considerable length, and appended thereto such official documents as in his opinion were necessary to the full understanding of this somewhat complicated subject. The supplementary observations herewith offered are for the further elucidation of the Canadian contention, and in disproof of the allegation that neither the Imperial nor the Canadian government adopted or put forward the British claim to the heads of inlets "until after the Protocol of the 30th May, 1898."

All of which is respectfully submitted:

(Signed) L. H. DAVIES.

OTTAWA, 29th November, 1900.

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No. 7.

## DRAFT ARBITRATION CONVENTION.

*Convention between the United States of America and the United Kingdom of Great Britain and Ireland for determining by arbitration the true treaty-boundary between the Territory of Alaska and the British Possessions in North America.*

(Communicated unofficially by Mr. Hay and forwarded by Lord Pauncefote, May 10, 1901.)

The United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, equally desirous for the friendly and final adjustment of the differences which exist between them in respect to the true meaning and application of certain clauses of the convention between Great Britain and Russia, signed the 16th (28) February, 1825, which clauses relate to the delimitation of the boundary-line between the British possessions in North America and the territory of Alaska, now a possession of the United States, in virtue of the cession thereof to the United States by Russia by the convention between the last-named powers, signed at Washington, the 30th March, 1867, wherein said clauses are embodied as defining the said territory so ceded, have resolved to provide for the submission of the questions as hereinafter stated to arbitration, and to that end have appointed their respective plenipotentiaries as follows:—

The president of the United States of America, the Honourable John Hay, Secretary of State of the United States; and

Her Britannic Majesty, the Right Honourable Lord Pauncefote, G.C.B., G.C.M.G., Her Britannic Majesty's Ambassador Extraordinary and Plenipotentiary:

Who, after an exchange of their full powers, which were found to be in good and due form, have agreed upon the following articles:—

## ARTICLE I.

An arbitral tribunal shall be immediately appointed to consider and decide the questions set forth in Article IV. of this convention. The said tribunal shall consist of six impartial jurists of repute, each of whom shall before entering upon his duties subscribe an oath that he will impartially consider the arguments and evidence presented to the tribunal and decide thereupon according to his true judgment. Three members of the tribunal shall be appointed by the President of the United States and three by Her Britannic Majesty. All questions considered by the tribunal, including the final award, shall be decided by a majority of all the arbitrators.

In case of the refusal to act, or of the death, incapacity, or abstention from service of any of the persons so appointed, another impartial jurist of repute shall be forthwith appointed in his place by the same authority which appointed his predecessor.

The arbitrators may appoint a secretary, and such other officers as may be requisite to assist them, and may employ scientific experts, if found to be necessary; fixing a reasonable compensation for such officers and such experts. The tribunal shall keep an accurate record of all its proceedings.

Each of the High Contracting Parties shall make compensation for the services of the arbitrators of its own appointment, and of any agent, counsel or other person employed in its behalf, and shall pay all costs incurred in the preparation of its case. All expenses reasonably incurred by the tribunal in the performance of its duties shall be paid by the respective governments in equal moities.

The tribunal may, subject to the provisions of this convention, establish all proper rules for the regulation of its proceedings.



## ARTICLE II.

Each of the High Contracting Parties shall also name one person to attend the Tribunal as its Agent to represent it generally in all matters connected with the arbitration.

The written or printed case of each of the two parties, accompanied by the documents, the official correspondence, and all other evidence in writing or print on which each party relies, shall be delivered in duplicate to each of the Arbitrators, and to the Agent of the other party, as soon as may be after the organization of the Tribunal, but within a period not exceeding months from the date of the exchange of ratifications of this treaty.

Within four months after the delivery on both sides of the written or printed case, either party may, in like manner, deliver in duplicate to each of the arbitrators, and to the agent of the other party, a counter-case, and additional documents, correspondence, and evidence in reply to the case, documents, correspondence, and evidence so presented by the other party. The tribunal may, however, extend this last-mentioned period when, in their judgment, it becomes necessary by reason of special difficulties which may arise in the procuring of such additional papers and evidence.

If, in the case submitted to the tribunal, either party shall have specified or referred to any report or document in its own exclusive possession without annexing a copy, such party shall be bound, if the other party shall demand it, to furnish to the party applying for it a duly certified copy thereof; and either party may call upon the other, through the tribunal, to produce the original or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the arbitrators may require.

Each party may present to the tribunal all pertinent evidence, documentary, historical, geographical, or topographical, including maps and charts, in its possession or control which it may deem applicable to the rightful decision of the questions submitted; and if it appears to the tribunal that there is evidence pertinent to the case in the possession of either party, and which has not been produced, the tribunal may in its discretion order the production of the same by the party having control thereof.

It shall be the duty of each party through its agent or counsel, within two months from the expiration of the time limited for the delivery of the counter-case on both sides, to deliver in duplicate to each of the said arbitrators and to the agent of the other party a written or printed argument showing the points and referring to the evidence upon which his government relies. The tribunal may, if they shall deem further elucidation with regard to any point necessary, require from either party a written, printed, or oral statement or argument upon the point; but in such case the other party shall have the right to reply thereto.

## ARTICLE III.

It is agreed by the High Contracting Parties that the arbitral tribunal shall consider in the settlement of the questions submitted to its decision the conventions respectively concluded between His Britannic Majesty and the Emperor of All the Russias under date of the 16th (28th) February, A.D. 1825, and between the United States of America and the Emperor of All the Russias concluded under date of the 18th (30th) March A.D. 1876; and particularly the Articles III., IV., V. and VII. of the first-mentioned convention, which in the original text are word for word as follows :—

‘ III. La ligne de démarcation entre les possessions des Hautes Parties Contractantes sur la côte du Continent et les Iles de l’Amérique Nord-Ouest, sera tracée ainsi qu’il suit :—

‘ A partir du point le plus méridional de l’île dite *Prince of Wales*, lequel point se trouve sous le parallèle du 54° 40’ de latitude nord, et entre le 131e et le 133e degré de longitude ouest (méridien de Greenwich), la dite ligne remontera au nord le long



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de la passe dite *Portland Chanel*, jusqu'au point de la terre ferme où elle atteint le 56e degré de latitude nord ; de ce dernier point la ligne de démarcation suivra la crête des montagnes situées parallèlement à la côte, jusqu'au point d'intersection du 141e degré de longitude ouest (même méridien) : et, finalement, du dit point d'intersection, la même ligne méridienne du 141e degré formera, dans son prolongement jusqu'à la Mer Glaciale, la limite entre les possessions Russes et Britanniques sur le Continent de l'Amérique Nord-Ouest.

‘IV. Il est entendu, par rapport à la ligne de démarcation déterminée dans l'article précédent :

‘1. Que l'île dite *Prince of Wales* apartiendra tout entière à la Russie.

‘2. Que partout où la crête des montagnes qui s'étendent dans une direction parallèle à la côte depuis le 56e degré de latitude nord au point d'intersection du 141e degré de longitude ouest, se trouverait à la distance de plus de 10 lieues marines de l'océan, la limite entre les possessions britanniques et la lisière de côte mentionnée ci-dessus comme devant appartenir à la Russie, sera formée par une ligne parallèle aux sinuosités de la côte, et qui ne pourra jamais en être éloignée que de 10 lieues marines.

‘V. Il est convenu, en outre, que nul établissement ne sera formé par l'une des deux parties dans les limites que les deux Articles précédents assignent aux possessions de l'autre. En conséquence, les sujets britanniques ne formeront aucun établissement soit sur la côte, soit sur la lisière de terre ferme comprise dans les limites des possessions Russes, telles qu'elles ont désignées dans les deux Articles précédents ; et, de même, nul établissement ne sera formé par des sujets russes au delà des dites limites.

‘VII. Il est aussi entendu que, pendant l'espace de dix ans, à dater de la signature de cette convention, les vaisseaux des deux puissances, ou ceux appartenans à leurs sujets respectifs, pourront réciproquement fréquenter, sans entrave quelconque, toutes les mers intérieures, les golfes, havres et criques sur la côte mentionnée dans l'Article III, afin d'y faire la pêche et le commerce avec les indigènes.’

The arbitrators shall also take into consideration any action of the several governments, or of their respective representatives, preliminary or subsequent to the conclusion of said treaties, so far as the same tends to show the intendment of the parties in respect to the limits of their several territorial jurisdictions under and by virtue of the provisions of said treaties.

## ARTICLE IV.

The said Tribunal shall answer and decide the following questions:—

1. Referring to Article III. of said Treaty of 1825 between Great Britain and Russia, was it intended thereby that the line of demarcation should be traced from the southernmost point of the island, now known as the Prince of Wales island, along the parallel of 54° 40' north latitude to the passage now commonly known and marked on the maps as the ‘Portland channel,’ and thence along the middle of said channel northward until said northward line shall reach on the mainland of the continent the 56th degree of north latitude?

If not, how should said line be traced to conform to the provisions of said treaty?

2. In extending the line of demarcation northward from said point on the parallel of the 56th degree of north latitude, following the crest of the mountains situated parallel to the coast until its intersection with the 141st degree of longitude west of Greenwich, subject to the condition that when such line should exceed the distance of 10 marine leagues from the ocean, then the boundary between the British and the Russian territory should be formed by a line parallel to the sinuosités of the coast, and distant therefrom not more than 10 marine leagues, was it the intention and meaning of said Convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe or strip of coast on the mainland, 10 marine leagues in width, separating the British possessions from the bays, ports, inlets havens, and waters



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of the ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich?

If not, how should said line of demarcation be traced to conform to the provisions of said treaty?

#### ARTICLE V.

The Arbitrators shall assemble for their first meeting at \_\_\_\_\_ so soon as practicable after receiving their commissions, and shall themselves fix the times and places of all subsequent meetings.

The decision of the Tribunal shall be made so soon as possible after the conclusion of the arguments in the case, and within three months thereafter, unless the President of the United States and Her Britannic Majesty shall by common accord extend the time therefor. The decision shall be made in writing and dated, and shall be signed by the Arbitrators assenting to the same. It shall be signed in duplicate, one copy whereof shall be given to the agent of the United States of America for his Government, and the other to the agent of Her Britannic Majesty for his government.

#### ARTICLE VI.

When the high contracting parties shall have received the decision of the arbitrators upon the questions submitted, as provided in the foregoing articles, they will at once proceed with negotiations for the final adjustment and demarcation of the said boundary line in conformity with such decision.

Should there be unfortunately a failure by the majority of the Arbitrators to agree upon any of the points submitted for their decision, it shall be their duty to so report in writing to the respective Governments through their respective agents. Should there be an agreement by a majority upon a part of the questions submitted, it shall be their duty to sign and report their decision upon the points of such agreement in the manner hereinbefore prescribed.

#### ARTICLE VII.

The present treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate, and by Her Britannic Majesty, and the ratifications shall be exchanged in Washington or in London so soon as the same may be effected.

In faith whereof we, the respective Plenipotentiaries, have signed this treaty, and have hereunto affixed our seals.

Done at Washington, in duplicate, this \_\_\_\_\_ day of  
A.D. nineteen hundred.

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*Governor General the Earl of Minto to Mr. Chamberlain.*

(Telegraphic.) P.

KINGSTON, ONT., October 15, 1901.

With regard to draft treaty for settlement of Alaska boundary my ministers dissent to proposed terms of reference for following reasons:—

Article No. I.—They object to even number of arbitrators, but would acquiesce in proposed number if at least one of the American arbitrators shall not be a citizen of United States or a subject of any state directly or indirectly under protection of United States and *vice versa* for Canadian arbitrators.

They also think that last paragraph should be omitted.



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Article No. IV.—My ministers protest against language used in subsections 1 and 2, and are of opinion that the terms of reference should not give prominence to one contention over another, and that questions asked should be somewhat as follows:—

1. What is intended as the point of commencement?
2. What is Portland Channel?
3. What course should the line take from the point of commencement to the entrance of Portland Channel?
4. To what point on the 56th parallel is the line to be drawn from the head of Portland Channel, and what course should it follow between those points?

5. What are mountains referred to as situated parallel to the coast, [which] mountains, when within 10 marine leagues from coast, are declared to form the eastern boundary?

6. In the event of summit of such mountains proving to be in places more than 10 marine leagues from coast, should the width of *lisière* which was to belong to Russia be measured from coast of ocean, strictly so called, along a line perpendicular [*sic*] [? parallel] thereto, or was it the intention or meaning of said convention that where coast is indented by deep inlets forming part of territorial waters of Russia, the width of *lisière* was to be measured (a) from the line of general direction of coast; or (b) from the line separating the waters of ocean from the territorial waters of Russia; or (c) from the heads of before mentioned inlets?

Article No. VI.—My ministers submit that the decision of the arbitrators upon questions referred to them should be final and binding on all parties, and that scientific experts be then appointed to lay down boundary in compliance with such decision.

They also consider that treaty should contain a stipulation that reference includes entire boundary at every point. Full particulars are being sent by despatch.

(Sgd) MINTO.

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*Governor General the Earl of Minto to Mr. Chamberlain.*

OTTAWA, 6th November, 1901.

SIR,—Referring to my cipher message of the 15th ultimo, on the subject of the draft arbitration treaty for the settlement of the Alaska boundary question, I have now the honour to present to you in a somewhat more extended form the reasons which render the terms of this convention unacceptable to my ministers.

In a previous despatch I acquainted you with some of the objections to this proposed arrangement urged upon me by my Prime Minister. During the recent visit to Canada of the Duke and Duchess of Cornwall and York, Sir Wilfrid Laurier availed himself of the opportunity of discussing the whole subject with Sir John Anderson, with the result that my advisers determined to lay before you counter-proposals to those of Mr. Hay. The substance of those counter-proposals was contained in my telegram to you of the 15th ultimo. Before proceeding further to consider them, I would observe that it is with much regret that my advisers find themselves unable to agree to the proposals of the United States government for the settlement of this long-pending controversy. They are constrained, however, to dissent therefrom for the following reasons:—

Article 1. As regards the composition of the tribunal you have already been made aware of the disinclination of my government to refer this important subject to a court so constituted as not to insure a final award. Their objection springs from the fact that an even number of arbitrators drawn from either side does not afford security in the event of differences of opinion for a binding decision on the point submitted to the tribunal. Animated, however, by a strong desire to secure a reference to arbitration, my ministers are prepared to acquiesce in the proposed number of six,



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provided that at least one of the American arbitrators shall not be a citizen of the United States, or a citizen or subject of any state or power directly or indirectly under the protection of the United States, and that at least one of the British arbitrators shall not be a British subject, or the subject or citizen of any power or state directly or indirectly under the protection of His Britannic Majesty.

They agree to this in the hope that the neutral arbitrators, who are not likely to be influenced by national considerations, may unite and thereby secure a majority award.

Article 3. My ministers consider that the last paragraph of the article is unnecessary and should be omitted, though they are prepared to yield the point if pressed.

Article 4. They take exception to the terms of subsection 1 of Article 4, on the ground that the contention of the United States with respect to the course the line should take between Prince of Wales island and Portland channel is put forward as the natural and primary interpretation of Article 3 of the Convention of 1825, whereas so far from this being so, the words 'along the parallel of 54° 40'' do not occur in the treaty as indicating the direction of the line between the points named above.

They protest against the language of the second subsection, wherein it is assumed in the recital that the line of demarcation might at places exceed the distance of ten marine leagues from the ocean, and they regard the placing of the extreme contention of the United States with respect to the location of the line, in the forefront of the reference, as open to the same objection they take in regard to the first subsection.

My advisers are of opinion that the terms of reference should not give prominence to one contention over the other, but rather should state in clear and unambiguous terms the questions whose determination can alone decide the issue.

Though not wedded to any particular form of words, they conceive that these questions might thus be formulated:—

Referring to Articles III. and IV. of the convention of 1825,

1. What is intended as the point of commencement ?
2. What channel is Portland channel ?
3. What course should the line take from the point of commencement to the entrance to Portland channel ?
4. To what point on the 56th parallel is the line to be drawn from the head of Portland channel, and what course should it follow between these points ?
5. What are the mountains referred to as situated parallel to the coast, which mountains when within ten marine leagues from the coast are declared to form the eastern boundary ?
6. In the event of the summit of such mountains proving to be in places more than ten marine leagues from the coast, should the width of the lisière which was to belong to Russia be measured from the coast of the ocean strictly so-called, along a line perpendicular thereto, or was it the intention and meaning of the said convention that where the coast is indented by deep inlets, forming part of the territorial waters of Russia, the width of the lisière was to be measured (a) from the line of the general direction of the coast, or (b) from the line separating the waters of the ocean from the territorial waters of Russia, or (c) from the heads of the aforesaid inlets ?

These questions appear to my ministers eminently fair. They are framed with the object of placing the case before the arbitrators in such a manner as to secure a decision upon all the points at issue without bias or favour to one side or the other.

Article 6. My ministers do not understand why any negotiations between the respective governments should be considered necessary, after the decision of the arbitrators has been received by them. They regard this proviso as opening the door to further difficulties and delays, and suggest that Article VI. be remodelled as follows:—

'When the high contracting parties shall have received the decision of the arbitrators upon the questions submitted as provided in the foregoing articles, which decision shall be final and binding upon all parties, they will at once appoint, each on its



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own behalf, one or more scientific experts, who shall, with all convenient speed, proceed together to lay down the boundary line, in conformity with such decision.'

My government, recalling the disposition of the United States representatives on the International Joint High Commission of 1898-9 to limit the scope of the arbitration then proposed to certain portions of the line, consider that the draft treaty under present consideration, should contain a stipulation in precise and positive terms, to the effect that the reference is intended to include, and does include, the definition of the entire boundary at every point between the southernmost point of Prince of Wales island and Mount St. Elias.

My ministers do not overlook the possibility of an award by such a tribunal as is contemplated by the present negotiations being absolutely against Canada or absolutely against the United States, and that in the latter event certain portions of the disputed territory which have been settled under the authority of the United States government might turn out to be British territory. They realize that the ownership of these localities is the main contention at the present time, and they are willing to agree to any arrangement which shall equitably provide for the contingency I have indicated.

The precedent of Venezuela is exactly in point and no substantial reason can be advanced against its application to this almost identical case. My ministers recognize, however, that owing to the peculiar features of the American constitution concerning the treaty-making power, a settlement on the lines of that precedent might prove in the end impracticable of attainment. They have, therefore, refrained from suggesting any express stipulations on this head, preferring to leave to Lord Pauncefote full latitude to provide that if either of the contracting parties should be found to be in possession of territory belonging to the other, the arbitrators should be empowered to deal with such a condition of things as might seem to them best fitted to meet the equities of the case.

My advisers trust that these suggestions may commend themselves to His Majesty's government.

I have, &c.,

(Signed), MINTO.

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Canada.

*Mr. Chamberlain to Lord Minto.*

DOWNING STREET, February 14, 1902.

MY LORD,—I have the honour to acknowledge the receipt of your despatch of November 6 last, and of your telegram of December 23 last, relative to the draft treaty for the settlement of the Alaska boundary question privately submitted to Lord Pauncefote by Mr. Hay.

2. A copy of a despatch which has now been addressed to Lord Pauncefote on the subject is enclosed for the information of your ministers.

I have, &c.,

(Signed) J. CHAMBERLAIN.

Governor General.

The Right Honourable

The Earl of Minto, G.C.M.G., &c., &c.

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No. 8.

*The Marquess of Lansdowne to Lord Pauncefoot.*

FOREIGN OFFICE, February 5, 1902.

MY LORD,—His Majesty's government have carefully considered, in communication with the government of Canada, the draft convention communicated to your Excellency, unofficially, by Mr. Hay in May last, which provides for the submission to arbitration of the Alaska boundary dispute. While most anxious to reach a solution of this long-pending question by means of arbitration, they find themselves compelled to dissent from the terms proposed in the following points :—

Article I. As regards the composition of the tribunal, His Majesty's government have always been averse from referring this important subject to a court so constituted as not to insure a final award.

Their objection in the present instance springs from the fact that an even number of arbitrators drawn from either side does not afford security in the event of differences of opinion for a binding decision on the points submitted to the tribunal.

Some doubt is felt, however, as to how far the United States' government regard the constitution of the tribunal by an equal number of arbitrators appointed by each of the parties as vital. Mr. Choate, in his note of August 9, 1899,\* stated that his government regarded 'the question of the organization of the tribunal as subordinate to that concerning the subject-matter to be arbitrated, and the terms and conditions on which its action is limited.' The advantage of having a tribunal constituted of an odd number of judges seems obvious, and His Majesty's government would much prefer such an arrangement. Animated, however, by a strong desire to secure a reference to arbitration, they are willing to acquiesce in the proposed number of six, provided that at least one of the United States' arbitrators shall not be a citizen of the United States, or a citizen or subject of any state directly or indirectly under the protection of the United States, and that at least one of the British arbitrators shall not be a British subject, or a subject or citizen of any power or state directly or indirectly under the protection of His Britannic Majesty.

The presence of two neutral arbitrators would seem to increase the chances of receiving a majority award; but this alternative would be adopted with reluctance, and the suggestion should only be put forward on behalf of His Majesty's government in the event of the United States adhering fixedly to their proposal for a tribunal of an equal number of judges nominated by each side.

Article III. The final paragraph of this article provides that 'the arbitrators shall also take into consideration any action of the several governments or of their respective representatives preliminary or subsequent to the conclusion of said treaties, so far as the same tends to show the intendment of the parties in respect to the limits of their several territorial jurisdictions under and by virtue of the provisions of the said treaties.' This provision appears to His Majesty's government unnecessary, and they would prefer that it should be omitted, though the point is one which they are prepared to yield if the United States attach importance to it.

Article IV. Sub-section 1 of this article, which prescribes the terms of the reference, runs as follows :—

'Referring to Article III of said treaty of 1825 between Great Britain and Russia was it intended thereby that the line of demarcation should be traced from the southernmost point of the island, now known as the Prince of Wales Island, along the parallel of 54° 40' north latitude to the passage now commonly known and marked on the maps as the "Portland Channel," and thence along the middle of said

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\* The terms of this note were similar to the communication made by Mr. Choate on the 2nd August and recorded in the despatch to Mr. Tower of that date (see No. 3).



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channel northward until said northward line shall reach on the mainland of the continent the 56th degree of north latitude ?'

His Majesty's government take exception to the terms of this sub-section on the ground that the contention of the United States with respect to the course the line of demarcation should take between Prince of Wales Island and Portland Channel is put forward as the natural and primary interpretation of Article III of the convention of 1825, whereas, so far from this being the case, the words 'along the parallel of 54° 40'' do not occur in the treaty as indicating the direction of the line between the points named above.

They also feel bound to demur to the language of the second sub-section, which reads as follows :—

'In extending the line of demarcation northwards from said point on the parallel of the 56th degree of north latitude, following the crest of the mountains situated parallel to the coast until its intersection with the 141st degree of longitude west of Greenwich, subject to the condition that when such line should exceed the distance of 10 marine leagues from the ocean, then the boundary between the British and the Russian territory should be formed by a line parallel to the sinuosities of the coast and distant therefrom not more than 10 marine leagues, was it the intention and meaning of said convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe or strip of coast on the mainland, 10 marine leagues in width, separating the British possessions from the bays, ports, inlets, havens, and waters of the ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich ?

'If not, how should said line of demarcation be traced to conform to the provisions of said treaty ?'

It is assumed in the recital that the line of demarcation might at places exceed the distance of 10 marine leagues from the ocean, and they regard the placing of the extreme contention of the United States with respect to the location of the line in the forefront of the reference as open to the same objection which they take in regard to the first sub-section.

In the opinion of His Majesty's government, the terms of reference should not give prominence to one contention over the other, but rather should state in clear and unambiguous terms the questions whose determination can alone decide the issue.

Though not wedded to any articular form of words, they submit that these questions might preferably be formulated as follows :—

Referring to Articles III and IV of the convention of 1825—

1. What is intended as the point of commencement ?
2. What channel is Portland Channel ?
3. What course should the line take from the point of commencement to the entrance to Portland Channel ?
4. To what point on the 56th parallel is the line to be drawn from the head of Portland Channel, and what course should it follow between these points ?
5. What are the mountains referred to as situated parallel to the coast, which mountains, when within 10 marine leagues from the coast, are declared to form the eastern boundary ?
6. In the event of the summit of such mountains proving to be in places more than 10 marine leagues from the coast, should the width of the *lisière* which was to belong to Russia be measured (1) from the coast of the ocean strictly so-called, along a line perpendicular thereto, or (2) was it the intention and meaning of the said convention that where the coast is indented by deep inlets, forming part of the territorial waters of Russia, the width of the *lisière* was to be measured (a) from the line of the general direction of the coast, or (b) from the line separating the waters of the ocean from the territorial waters of Russia, or (c) from the heads of the aforesaid inlets ?



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These questions appear to His Majesty's government eminently fair. They are framed with the object of placing the case before the arbitrators in such a manner as to secure a decision upon all the points at issue without bias or favour to one side or the other.

Article VI provides that 'when the high contracting parties shall have received the decision of the arbitrators upon the question submitted, as provided in the foregoing articles, they will at once proceed with negotiations for the final adjustment and demarcation of the said boundary-line, in conformity with such decision.'

His Majesty's government doubt whether any negotiations between the respective governments should be considered necessary after the decision of the arbitrators has been received by them. They are disposed to regard this proviso as opening the door to further difficulties and delays, and would suggest that Article VI should rather be remodelled as follows :—

'When the high contracting parties shall have received the decision of the arbitrators upon the questions submitted, as provided in the foregoing articles, which decision shall be final and binding upon all parties, they will at once appoint, each on its own behalf, one or more scientific experts, who shall, with all convenient speed, proceed together to lay down the boundary-line, in conformity with such decision.'

His Majesty's government, recalling the disposition of the United States' representatives on the International Joint High Commission of 1898-99, to limit to certain portions of the line the scope of the arbitration then proposed, consider that the draft treaty under consideration should contain a stipulation in precise and positive terms, to the effect that the reference is intended to include, and does include, the definition of the entire boundary at every point between the southernmost point of Prince of Wales Island and Mount St. Elias.

His Majesty's government do not overlook the possibility of an award by such a tribunal as is contemplated by the present negotiations being absolutely against Canada or absolutely against the United States, and that, in the latter event, certain portions of the disputed territory which have been settled under the authority of the United States' government might turn out to be British territory. They realize that the ownership of these localities is the main contention at the present time, and they are willing to agree to any arrangement which shall equitably provide for the contingency above indicated.

The precedent of the treaty between Great Britain and Venezuela, in Article IV of which provision was made for the case of previous occupation and for the recognition of other rights and claims, appears to them exactly in point, and its application to this almost identical case singularly appropriate. They recognize, however, that owing to the peculiar features of the American constitution concerning the treaty-making power, a settlement on the lines of that precedent might prove in the end impracticable of attainment. They therefore refrain from suggesting any express stipulations on this head, preferring to leave Your Excellency full latitude to provide by some means that if either of the contracting parties should be found to be in possession of territory belonging to the other, the arbitrators should be empowered to deal with such a condition of things as might seem to them best fitted to meet the equities of the case.

I should wish Your Excellency to communicate to Mr. Hay in such form as you may consider most suitable the views of His Majesty's government as above indicated, and to discuss with him the points in which the proposals of His Majesty's government diverge from those of the United States.

I am, &c.,

(Signed) LANSLOWNE.



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*Lord Pauncefote to the Marquess of Lansdowne—Received April 1.*

WASHINGTON, March 20, 1902.

MY LORD,—I have the honour to acknowledge the receipt of your Lordship's despatch, No. 14, of January 23, transmitting copy of a letter from the Colonial Office, with inclosures from the Canadian Government, in which it was suggested that representations should be made to the United States Government in regard to certain storehouses marked on a chart of part of the Pacific coast, copy of which was inclosed, published by the United States Geodetic Survey.

On the receipt of this despatch I addressed a note to Mr. Hay, stating that I had been directed by your Lordship to make an inquiry as to the nature of these storehouses, and the reason for their erection in territory the title to which was, and still is, the subject of diplomatic negotiations between Great Britain and the United States.

Mr. Hay informed me, in reply, that he did not find, upon examination of the charts of the region referred to, any indication of storehouses marked thereon. He added, however, that the storehouses were upon territory which had been in possession of the United States since its acquisition from Russia, and that the designation of Portland canal was such as had been noted on all the charts issued by the United States since that acquisition. Mr. Hay further stated that he was not aware that His Majesty's government had ever advanced any claim to this territory before the signature of the protocol of May 30, 1898, preliminary to the appointment of the Joint High Commission.

Upon the receipt of this communication I addressed a further note to Mr. Hay, stating the number of the chart on which the storehouses in question were indicated.

I have now received a reply from the United States government stating that the omission of the storehouses on the later issue of charts was caused by an oversight of the draughtsman, and that they will appear on the charts to be hereafter issued. But he offers no further observation on the subject.

I have the honour to inclose copies of Mr. Hay's notes of February 28 and March 11, and I also return the chart transmitted with your Lordship's despatch.

I have, &c.,

(Signed) PAUNCEFOTE.

*From Mr. Chamberlain to Lord Minto.*

F.O. April 9, C.O. to F.O.

DOWNING STREET, April 23, 1902.

MY LORD,—With reference to my secret despatch of February 14, I have the honour to transmit to you, for the information of your ministers, copy of a correspondence with the Foreign Office relative to the draft convention for the settlement of the Alaska Boundary question, privately submitted to Lord Pauncefote by Mr. Hay, in May, 1901.

I have, &c.,

J. CHAMBERLAIN.

Governor General,

The Right Honourable

The Earl of Minto, G.C.M.G.



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FOREIGN OFFICE, April 9, 1902.

SIR,—With reference to the letter from this office of February 8 last on the subject of the draft convention for the settlement of the Alaska Boundary question by arbitration put forward unofficially by Mr. Hay in May last, I am directed by the Marquis of Lansdowne to transmit herewith for the consideration of the Secretary of State for the Colonies, copy of a confidential despatch from His Majesty's ambassador at Washington, in which His Excellency forwards a memorandum communicated to Mr. Hay, explaining the points on which His Majesty's government dissent from the terms of the draft convention.

Lord Pauncefote reports the language held by Mr. Hay and the attitude assumed by President Roosevelt with regard to the boundary question.

I have, &amp;c.,

(Sgd.) F. H. VILLIERS.

The Under Secretary of State,  
Colonial Office.

*Section I.**Lord Pauncefote to the Marquess of Lansdowne.*

(No. 85 Extract.)

WASHINGTON, March 28, 1902.

MY LORD,—I have the honour to acknowledge the receipt of Your Lordship's despatch No. 28 of the 5th ultimo with reference to the draft of a convention, communicated to me unofficially by Mr. Hay in May last, providing for the submission to arbitration of the Alaska boundary dispute.

In that despatch Your Lordship informed me that His Majesty's government had carefully considered the draft convention in communication with the government of Canada, and you indicated the points in which they found themselves compelled to dissent from its terms, while most anxious to reach a solution by means of arbitration.

In accordance with Your Lordship's instructions, I communicated to Mr. Hay the views of His Majesty's government in the form of an unofficial memorandum based on Your Lordship's despatch. \* \* \* \* \*

*From Mr. Chamberlain to Lord Minto.*

(F.O. April 8, 1902, March 20, 1902.)

DOWNING STREET, April 18, 1902.

MY LORD,—I have the honour to acknowledge the receipt of your despatch No. 302 of October 31 relative to certain United States storehouses marked on the chart No 3091 published by the United States Coast and Geodetic Survey, and to state that representations in the sense desired by your ministers have been duly made to the United States government by His Majesty's ambassador at Washington.

2. A copy of a letter which has been received from the Foreign Office, communicating Lord Pauncefote's report of the result of these representations, is inclosed, for the information of your ministers. Before causing a reply to be returned to it, I shall be glad to be furnished with any further observations which they may have to offer on the subject.

I have, &amp;c.,

(Sgd.) J. CHAMBERLAIN.

Governor General,

The Right Honourable

The Lord of Minto, G.C.M.G., &amp;c., &amp;c.



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No. 10.

*The Marquess of Lansdowne to Lord Pauncefote.*

FOREIGN OFFICE, April 8, 1902.

SIR,—In accordance with the suggestion contained in your letter of the 7th January last, His Majesty's Ambassador at Washington was requested to make representations to the United States government with regard to the storehouses marked with the numbers 1, 2, 3 and 4, on a chart of part of the Pacific coast, published by the United States Geodetic Survey, and to inquire as to the reason for their erection in territory the title to which was, and still is, the subject of diplomatic negotiations between Great Britain and the United States.

I am directed by the Marquess of Lansdowne to transmit to you, herewith, for the information of the Secretary of State for the Colonies, a copy of the despatch which has been received from Lord Pauncefote on the subject. (No. 8.)

It will be observed that, in reply to the ambassador's representations, Mr. Hay merely notes that the storehouses are upon territory which has been in possession of the United States since its acquisition from Russia, and that the designation of Portland canal is such as has been marked on all the charts issued by the United States since that acquisition. Mr. Hay further states that he is not aware that His Majesty's government have ever advanced any claim to this territory before the signature of the protocol of May 30, 1898, preliminary to the appointment of the High Joint Commission.

Lord Lansdowne will be glad to receive any observations which Mr. Chamberlain may have to offer on Lord Pauncefote's despatch.

The chart which accompanied your letter of January 7 is returned herewith as requested.

I am, &c.,  
(Signed)), F. H. VILLIERS.

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EXTRACT from a Report of the Committee of the Honourable the Privy Council, approved by His Excellency on the 12th June, 1902.

The Committee of the Privy Council have had under consideration a despatch, dated April 18, 1902, from the Right Honourable the Secretary of State for the Colonies, covering a copy of a report by His Majesty's ambassador to the United States of the result of the representations which he made on behalf of the government of Canada to the United States government on the subject of certain storehouses which have been erected by the United States upon the shores of Portland canal, and Wales and Pearse islands.

The Minister of the Interior, to whom the despatch in question was referred, submits that in relation to the statement made in the Minute of Council, dated 22nd October, 1901, that the territory on which these storehouses stand was, at the time of their erection, the subject of diplomatic negotiations, the Secretary of State of the United States states that he is not aware that the government of His Britannic Majesty ever advanced any claim to this territory before the signature of the protocol of May 30, 1898, preliminary to the appointment of the Joint High Commission.

The minister further submits that on March 18, 1891, however, the government of Canada called the attention of the Right Honourable the Secretary of State for the Colonies to a passage in the report of the superintendent of the United States Coast and Geodetic Survey, in which it was said that congress had placed in charge of that bureau a preliminary survey of the frontier line between Alaska and British Columbia, that such survey would have to be carried *through the Portland canal* to the 56th degree of north latitude, thence northwestwardly following as nearly as may be practicable the general trend of the coast, at a distance of *about 35 miles from it*, to the



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141st degree of west longitude. The minute pointed out that the question of the boundary at this point was at the time the subject of some difference of opinion and considerable correspondence, and asked that the attention of the government of the United States should be called to this fact. This was done in a note dated June 5, 1891, addressed by Sir Julian Pauncefote to Mr. Blaine, Secretary of State of the United States. The representations of Her Majesty's minister, it will be seen, had direct and precise reference to the subject of the present Minute of Council.

The minister states that shortly after this followed the negotiations of February, 1892, and the convention of July 22 of that year by which provision was made for the delimitation of the boundary line in accordance with the 'spirit and intent of the treaties,' and agreement was entered into that 'as soon as practicable after the report or reports of the commissioners shall have been received they will proceed to consider and establish the boundary line in question.'

That the report of the commissioners was signed on December 31, 1895, and laid before the parliament of Canada and the congress of the United States early in 1896, but, in the same year, before the high contracting parties had met to consider the boundary line, and while the matter was still *sub judice* the United States erected these storehouses on part of 'the territory adjacent' which was the subject of the operations of the joint survey and of the diplomatic negotiations.

The minister, without going into the arguments upon which the claims of Canada to this part of the territory are based with which His Majesty's government is already fully acquainted, desires to say that he conceives that occupation effected under the circumstances above detailed would not in international law have any validity, but he is of opinion that, nevertheless, the government of Canada should not allow it to pass without protest.

The committee concurring in the above report advise that His Excellency be moved to transmit the substance of this minute to His Majesty's Secretary of State for the Colonies, with the request that the government of the United States may be informed of the views of the government of Canada.

All which is respectfully submitted for His Excellency's approval.

JOHN J. MCGEE,  
*Clerk of the Privy Council.*

No. 10.

*The Marquess of Lansdowne to Mr. Raikes.*

(Extract.)

FOREIGN OFFICE, July 16, 1902.

The United States' ambassador reminded me to-day that he had supplied His Majesty's government with a very full statement of his views on the boundary question in a letter dated January, 1900, to which, so far as he was aware, no reply had ever been made.

I told him that we had thought it desirable to refer the letter in question to the Canadian government, and that we had received their comments early in 1901. We had thereupon prepared a draft despatch containing a full rejoinder to his letter, but before we had had time to issue it we had received from Washington the draft agreement as to the Alaska boundary, communicated to Lord Pauncefote by Mr. Hay.

The document seemed to us to open a new and promising phase in the negotiation; and we had, consequently, thought it better, for the time at all events, to concentrate our attention upon it, rather than pursue a discussion, which might prove academical, of the points dealt with in his Excellency's note. Now, however, as His Majesty's government were given to understand that the president was not disposed to accept the Hay-Pauncefote draft as a basis, I was prepared to resume the discussion of Mr. Choate's note, and I hoped to be able to send our rejoinder to it at an early date.



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No. 11.

*The Marquess of Lansdowne to Mr. Raikes.*

FOREIGN OFFICE, August 18, 1902.

SIR,—The communication relative to the Alaska boundary, addressed to me by the American ambassador on January 22, 1900, received careful attention and a reply had been prepared, when Lord Pauncefote reported that Mr. Hay had handed to him the draft of a treaty for determining the question by arbitration.

This important proposal appeared to denote the commencement of a new phase in the negotiations, and it seemed to His Majesty's government that in the end no useful purpose would be served by presenting, at such a moment, a rejoinder to the ambassador's argument.

The government of Canada were accordingly consulted with regard to the draft treaty, and, in March last, Lord Pauncefote, in accordance with his instructions, presented to Mr. Hay a memorandum stating that His Majesty's government, while most anxious to reach a solution by means of arbitration, felt bound to indicate some points on which they dissented from the terms of the draft.

No definite reply was returned to this communication, but His Majesty's Government were given to understand that the president was not disposed to continue negotiations on the basis of Mr. Hay's draft. It was, therefore considered desirable to take advantage of the presence in this country of the Governor-General of Canada and of Sir Wilfrid Laurier and some of his colleagues to discuss the present position of the question.

I took an opportunity of mentioning this to the American Ambassador, and, in the course of our conversation, he reminded me of his note of January, 1900, and remarked that, so far as he was aware, no reply had ever been made to it.

As the absence of a rejoinder might be considered to imply inability to meet the arguments advanced, it is desirable that I should place on record the following observations :—

His Majesty's government learned with satisfaction from His Excellency's note that the government of the United States were not averse to a reference of the main difference between Great Britain and the United States to the adjudication of an independent tribunal, but rather contemplated the probability of such a mode of settlement of this long-pending controversy. They agree that what the ambassador describes as the paramount issue—namely, whether the line should be drawn across inlets or round their heads—can best be decided by this means, but they are unable to share the view that the particular course which the line is to take when the above question has been settled can be satisfactorily determined by a joint survey. A joint survey has already been made, and if the difference between the two governments could not be settled by the aid of the very complete maps thereby afforded, it is scarcely to be anticipated that a fresh survey would achieve a more definite result. It seems rather that the 'minor or secondary' though 'highly important' questions, namely, the exact location of the boundary-line and its precise distance from the coast, are analagous to those involved in the main issue, and can only be determined by a similar process. For instance, assuming that the question of inlets had been decided, and a joint survey despatched to lay down the boundary in conformity with the provisions of the treaty of 1825, which prescribes that the line shall follow the summit of the mountains situated parallel to the coast, the British surveyors would naturally interpret this to mean the summit of the mountains nearest the coast, while it is possible that the United States' surveyors might contend for the highest range. How could this point be decided? Yet upon the decision would depend the possession of part of the town of Skagway, even supposing the ownership of the heads of inlets was decided adversely to the British contention. Again, if there should be a break in the mountain range which it is decided to follow, should the line across the break be drawn



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parallel to the coast-line between the same degrees of latitude as the terminals of the break or parallel to the general trend of the coast line. Controversies over these points, and others of a similar character, the least of which might turn out to be of far-reaching importance, would, it is to be feared, arise, and it is scarcely to be expected that surveyors in the field could reach an agreement upon them, nor, indeed, would it be expedient to allow them such latitude. With regard to the question relative to the heads of inlets, Mr. Choate observed that of the two absolutely distinct interpretations which have been presented by Great Britain and the United States, 'one or the other is right, and can and should be ascertained and determined so to be to the exclusion of the other.' The same argument is equally applicable to many occasions of difference which surveyors sent to lay down the boundary would encounter. For these reasons His Majesty's government are of opinion that all questions which depend for their solution upon the interpretation of the treaty should be simultaneously referred to arbitration, to determine the true meaning of that instrument, and this, not merely with regard to the Lynn canal or any other particular point, but in respect of the whole line, throughout its entire length, from the southernmost point of Prince of Wales Island to Mount Elias. What is desired by both governments is the termination of the dispute, and this appears to be the only way in which it can be satisfactorily and permanently settled.

The objection recorded by Mr. Choate to the application of the Venezuela treaty to the adjustment of the present controversy seems to be directed against the provision for compromise which that arrangement affords, and the latitude given to the tribunal constituted under it ; but, for the reasons which have been already adduced in Lord Salisbury's despatch of October 14, 1899, His Majesty's government still consider that the circumstances of the Alaska boundary controversy are such as to warrant an unqualified submission to an impartial tribunal, and it was solely with the desire to meet the objections of the United States' representatives that the British members of the Joint High Commission of 1898-99 proposed to allow that continued adverse possession should be recognized, and full regard had to the equities of the case. With this object in view, it appeared to them that the Venezuela treaty offered a convenient and suitable precedent. Accordingly, they proposed arbitration on those lines ; but His Majesty's government are not wedded to a particular formula, and are prepared to consider any reasonable modifications to the rules suggested (not inconsistent with finality of decision) which the United States may consider the special circumstances of the case to call for. Towards such questions as the composition of the tribunal and its organization, as well as the terms of reference, His Majesty's government have, with the qualification above mentioned, adopted no fixed attitude, nor have they declined to reconsider the original proposal of the British side of the Joint High Commission, which, at the same time, they conceive to be eminently fair to the United States.

But while they are thus prepared to acquiesce in every reasonable concession, it would be difficult to include in that category without some reciprocal concession or compensation the stipulation contained in the last paragraph of the ambassador's note, to the effect that all settlements made by American citizens in the disputed territory under the authority of their government up to a very recent period shall remain the property of the United States. The main question in this controversy is that which involves the ownership of the heads of inlets in general, and of the Lynn canal in particular. That canal derives its present importance from the fact of its forming the natural approach to the gold-bearing regions of the Canadian interior, which are accessible by sea in those latitudes through the ports of Dyea, Skagway, and Pyramid Harbour. The valleys in the rear of these ports are the only known avenues of approach to the interior which come down to the Lynn canal, and are consequently the measure of its value. Their ownership must, therefore, constitute, in the view of the United States government, the chief object of the arbitration. There cannot be a doubt that the proposal of the United States plenipotentiaries at the meeting of the Joint High Commission, re-



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newed by Mr. Choate, to except from the 'perils of any arbitration all towns or settlements on tide-water settled under the authority of the United States and under the jurisdiction of the United States at the date of this treaty,' was put forward with the object of securing Dyea, Skagway, and Pyramid Harbour, for they are the only settlements on tide-water that can possibly be embraced by the definition. The suggested reservation therefore, seems equivalent to a declaration on the part of the United States government that they will accept arbitration only on conditions that the principal objects of the reference shall be theirs in any event, and that Great Britain will so covenant before the parties go into court.

The proposal seems based on the assumption that the settlements at the head of the Lynn canal were established under the authority of the United States prior to the announcement of any claim to the territory in question on the part of Great Britain. So confidently is the soundness of this contention assumed, that several times in His Excellency's not it is emphasized by the express inclusion of Canada, as distinct from the mother country, in the charge of having said or done nothing prior to 1898 to indicate her claim.

I will not recapitulate the arguments to the contrary which have been previously advanced. There is one point, however, with which I must deal in some detail. Mr. Choate suggested that too much weight had been given to Mr. Dawson's letter of February 7, 1888, laid before the Fisheries Commission of that year, and argues that the meetings between that gentleman and Professor Dall were wholly informal; that neither possessed any delegated authority whatever, and that their opinions could not be held to commit anybody but themselves. While it is true that the conferences between Messrs. Dawson and Dall were informal, these gentlemen were experts specially selected by their respective governments, and their views must therefore be held to be those of the governments which they represented. That this was so understood at the time is evident from the map (No. 16) which accompanies the reports of both experts submitted to congress by President Cleveland on March 2, 1889. That map is a reproduction of one prepared in Ottawa for the purposes of the conference of 1887-88. As originally published it showed no boundary lines, but upon a few copies lines were drawn in ink by Dr. Dawson, showing (1) a boundary line as given on the United States coast survey map of Alaska, 1884; (2) a boundary line approximately following the summits of mountains parallel to the coast, in presumed conformity with the text of the convention of 1825, as understood by the Canadian government; (3) one of the conventional lines discussed during the conferences, and referred to in the printed correspondence between Dr. Dawson and Sir C. Tupper, which the latter laid before the commission. It was not possible to draw the second conventional line, as this depended upon geographical details not determined at the time. A note upon the face of the map states that the line from the United States coast survey map 'disregards both the treaty reference to mountains and that to the ocean coast.' A copy of the lithographed map, with the lines and notes above referred to, was supplied to Professor Dall, and is reproduced in *fac-simile* as map No. 16 above referred to.

That the line following the mountains parallel to the coast, crossing all the larger inlets, must at the time have been accepted as embodying the Canadian view of the meaning of the treaty of 1825, is shown by the addition by the United States authorities to the *fac-simile* (at the top and outside the border of the map) of the words 'Dawson's Canadian map, 1887, showing conventional lines *proposed by Canada*.' This map, as originally prepared, and also with Dr. Dawson's additions, was published by the United States government and submitted to Congress.

The statement by Mr. Choate that the meetings between Messrs. Dawson and Dall were not held during the sittings of the Joint High Commission of 1888 seems to have been made under a misapprehension. An examination of the protocols of the commission discloses that on January 9, 1888, Mr. Chamberlain suggested that Dr. Dawson and Professor Dall should meet and endeavour to agree upon some definite suggestions for the consideration of the conference. On January 23 Mr. Bayard concurred in this



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suggestion, and on the 30th it was arranged that Dr. Dawson should be summoned by telegraph. On February 2 Mr. Chamberlain announced that Dr. Dawson had arrived at Washington, and Mr. Bayard informed the conference that the necessary arrangements would be made at once for him to meet Professor Dall. On February 7 Mr. Chamberlain reported to the commission that Dr. Dawson and Professor Dall had not made any progress on the question of the Alaska boundary. The commission sat on February 2, 3, 6 and 7. The conferences between Messrs. Dall and Dawson were therefore held during the sittings of the Joint High Commission. The inference that Sir C. Tupper dissociated himself from Dr. Dawson, because in the former's note of transmission he referred to the latter's views as 'his'—i.e., Dr. Dawson's—'own,' appears to be based upon a misconception of Sir C. Tupper's meaning. Bearing in mind that on the same day on which Dr. Dawson's letter was written, Mr. Chamberlain reported to the conference that the two experts had failed to come to any agreement, it is not surprising that Sir C. Tupper should allude to Dr. Dawson's views as 'his own,' meaning thereby his own, not as distinct from those of the government which he was there to represent, but from those of his fellow-expert with whom he could not reach any agreement. They were his individual views in the sense that they were not shared by Professor Dall. These views were known to the government of which Sir C. Tupper was a member before Dr. Dawson was summoned to Washington. If the Canadian government were not in accord with them it is scarcely likely that he would have been selected to confer with the American expert, nor is it probable that Sir C. Tupper would have placed them before Mr. Bayard without, at any rate, some distinct and explicit disavowal of responsibility for them. Moreover, as His Majesty's government can confidently state, it is not the case, as suggested, that Sir C. Tupper was in no mood to adopt General Cameron's opinions on the subject of the Alaska boundary, for it was at the instance of Sir C. Tupper, at the time High Commissioner for Canada, that General Cameron was selected by the Secretary of State for the Colonies to investigate and report upon this question of the Alaska boundary. Sir C. Tupper, in the year 1888, attached great weight to General Cameron's views on the subject of the Alaska boundary, and, in a letter addressed to the Secretary of State for the Colonies on the 1st August, 1888, he entirely concurred in protesting against any attempt on the part of the United States to disregard Canada's claim to the heads of inlets. He fortified the protest of the Canadian government by a memorandum from General Cameron's pen, of which a copy is herewith inclosed.

Attention must also be given to the message of the President of the United States transmitting these reports and maps of Dr. Dawson to congress, and to the memorandum of his Secretary of State, which accompanied them, in which Mr. Bayard expresses the opinion that these documents are 'of value as bearing upon a subject of great international importance, and should be put in shape for public information.'

It appears to His Majesty's government that the President thus publicly acquainted the people of the United States of Canada's claim to the heads of the inlets more than eight years before anything in the nature of settlement was begun at the head of the Lynn canal, for beyond a few trifling acts of occupation on the part of private individuals, at periods separated by considerable intervals of time, no settlement was attempted in those localities until the mining rush to the Klondike in the spring of 1897.

It is desirable, before concluding this despatch, to allude to the statement in Mr. Choate's communication that the United States government are not aware that at the conference held in Washington in February, 1892, the Canadian ministers proposed, as recorded in Lord Salisbury's despatch of October 14, 1899, 'that a reference to some impartial authority be made by Great Britain and the United States for the purpose of ascertaining and deciding finally the true boundary, regard being had to the treaties relating to the subject, and likewise to the case which may be presented by either government, and to the testimony which may be adduced as to the physical features and conditions of that country.'



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The accuracy of this record is confirmed by the minutes of the proceedings of this conference, signed by the Canadian delegates and concurred in by Her Majesty's minister at Wasington. These minutes, which were published by order of the Canadian parliament in the sessions of 1892 and 1893, also record that on February 12, 1892 'the various contentions relating to the boundary were then explained,' thereby indicating that the existence of a divergence between the views of the respective government as to the true meaning of the treaty was recognized at that date, and that each government was acquainted with the claim of the other.

The main facts in support of the British claim have already been fully set forth in previous communications, and it seems unnecessary, as I have before said, to repeat them ; but His Majesty's government desire to place on record the foregoing supplementary observations in further elucidation of some points of their contention, and in disproof of the suggestion that neither the Imperial nor the Canadian government adopted or put forward the British claim to the heads of the inlets 'until after the protocol of May 30, 1898.'

You are authorized to read this despatch to Mr. Hay, and to hand him a copy of it should he so desire.

I am, &c.,

(Signed) LANSDOWNE.

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Inclosure No. 11.*Memorandum.*

By way of Lynn canal, of which the entrance is about  $135^{\circ}$  west longitude,  $58^{\circ} 20'$  north latitude, is at present the only practical route to gold mines being worked on tributaries of the Pelly river, some in British and some in United States territory.

The northern extremity of Lynn Canal forks—the western and eastern branches being formed respectively by the inflow of the Chilkat and Chilkoot rivers.

The route hitherto followed by miners entering the country has been by the valley of the Chilkoot—across the height of lands called Perrier or Payer portage.

The ascent to the portage is extremely tedious, but once overcome, there is gained navigable water connected with the Pelly river and the Yukon river. Lieutenant Schwatka noted Perrier portage as the point at which the boundary between United States' and British territory passed, the United States' territory lying seaward, the British territory inland. Lieutenant Schwatka had been employed to make a reconnaissance in Alaska, but finding that country most accessible through Lynn canal, continued his exploration down the Pelly river in British territory until it passed the meridian of  $141^{\circ}$  west longitude into United States' territory. Lieutenant Schwatka's report was published as a congressional paper.

It is not known that there has been any other official claim to Perrier pass as the point at which the international boundary runs.

From the ocean entrance to Lynn canal, the head of boat navigation up to the Chilkoot is about 80 miles ; from this point to Perrier pass is somewhat in excess of 30 miles, or 10 marine leagues.

Lynn canal has waterways of less than 6 miles in breadth at no great distance from its entrance.

It is contended on the Canadian side that the 10 marine leagues given as the maximum breadth of the United States' coast territory in the second sub-section of Article IV, Russo-British convention of 1825, may not be measured from any point within an inlet not exceeding 6 miles in breadth, and that, consequently, it is not, under any circumstances, possible that the international boundary can be anywhere so far inland as Perrier pass.



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To avoid the inconvenience of the ascent to the Perriér portage, a diverging route, called White pass, a little to the eastward of Perrier pass route, has recently been explored.

Speculators interested in the gold mines in the interior, and in transit of miners and their goods have for some time had their attention turned to the desirability of opening up the White pass route.

The greater part, if not all, of this divergent line is, it is contended, within British territory ; and as affecting the principles which are ultimately to determine the whole of the British Alaskan boundary, as well as seriously affecting a British route which may hereafter, with advantage of the greatest importance, be opened through the Taku River Valley, it is submitted that the United States' contention should be emphatically protested against.

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DOWNING STREET, August 25, 1902.

MY LORD,—I have the honour to transmit to you, for the information of your ministers with reference to Sir H. Strong's despatch No. 221 of June 19 last, the papers noted in subjoined schedule.

I have, &c.,

(Sgd.) J. CHAMBERLAIN.

The Officer administering  
The Government of Canada.

Date—1902.

Description of Document.

16th August. F.O. to C.O. with inclosure.—The erection by the United States of storehouses on disputed territory in Alaska.

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FOREIGN OFFICE, August 16, 1902.

SIR,—With reference to your letter of August 1, I am directed by the Secretary of State for Foreign Affairs to transmit to you, to be laid before the Secretary of State for the Colonies, the accompanying copy of a despatch to His Majesty's Chargé d'Affaires at Washington, respecting the erection of certain United States storehouses in the disputed territory of Alaska.

I am, &c.,

(Sgd.) T. H. SANDERSON.

The Under Secretary of State,  
Colonial Office.

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FOREIGN OFFICE, August 13, 1902.

SIR,—I communicated to the Secretary of State for the Colonies a copy of Lord Pauncefote's despatch, No. 81, of March 20 last, which contained the reply of the United States government to the inquiry as to the nature of certain storehouses marked on a chart of part of the Pacific coast, issued by the United States Coast and Geodetic Survey, and the reason for their erection in territory the title to which is still the subject of diplomatic negotiations between this country and the United States.

I transmit to you, herewith, copy of a letter from the Colonial Office, inclosing copies of further correspondence with the Canadian government on the subject.



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You will observe, that in reply to the statement of Mr. Hay, recorded in Lord Pauncefote's despatch above referred to, that he was not aware of any claim having been advanced by Great Britain to the territory in question previous to the signature of the protocol of May 30, 1898, preliminary to the appointment of the Joint High Commission, the Dominion government call attention to the note addressed by His Majesty's minister at Washington to the United States Secretary of State on June 5, 1891, in which, in view of a certain passage in the report of the United States Coast and Geodetic Survey, Mr. Blaine was reminded that the question of the boundary in the neighbourhood referred to was the subject of some difference of opinion, and that the actual line could only be properly determined by an intercolonial commissison.

The Canadian government point out that shortly after that date provision was made, in the convention of July 22, 1892, for the delimitation of the boundary line in accordance with the 'spirit and intent of the treaties,' and an agreement was entered into that the boundary was to be considered and established as soon as practicable after the receipt of the report of the commissioners.

That report was signed on December 31, 1895, and laid before the parliament of Canada and the United States congress early in 1896, but, in the same year, before the high contracting parties had met to consider the boundary line, and while the matter was still *sub judice*, the United States erected the storehouses on part of the 'territory adjacent,' which was the subject of the operations of the joint survey and of diplomatic negotiations.

The Dominion government conceive that occupation effected under such circumstances would not in international law have any validity, but they are of opinion that nevertheless the matter should not be allowed to pass without protest. They therefore desire that the United States government may be informd of their views on the subject.

I have accordingly to request you to make a communication to Mr. Hay, in the sense suggested, and I would draw your attention to the opinion expressed in the inclosed letter from the Colonial Office that in dealing with the contention of the United States government, it might be advisable to refer to the observations with regard to the boundary line contained in Lord Salisbury's despatch, No. 213, to Mr. Tower, of October 14, 1899, as well as to the correspondence of 1891, cited in the accompanying minute of the Canadian Privy Council.

I am, &c.,

(Sgd.) LANSDOWNE.

A. S. Raikes, Esq.,  
&c., &c., &c.

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No. 12.

*Mr. Raikes to the Marquis of Lansdowne.—(Received September 25.)*

WASHINGTON, September 12, 1902.

MY LORD,—I have the honour to inform your Lordship that I to-day read your Lordship's despatch of the 18th ultimo, respecting the Alaska boundary to Mr. Adee, the Acting Secretary of State, and at his desire left a copy of the despatch with him. He assured me that it should have his careful consideration.

I have, &c.,

(Signed) ARTHUR S. RAIKES.



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## No. 13.

*Sir M. Herbert to the Marquis of Lansdowne.—(Received October 17.)*

(Telegraphic.)

WASHINGTON, October 17, 1902.

In a short conversation of an unofficial character which I had to-day with the Secretary of State, he alluded to the question of the Alaska boundary.

He renewed the proposal made to Lord Pauncefote last March, viz., that a tribunal should be appointed, the members of which should merely place their reasoned opinions on record.

He still held the opinion he had expressed to Lord Pauncefote that a settlement would be facilitated by the appointment of such a tribunal.

## No. 14.

*Mr. Chamberlain to Governor General, the Earl of Minto.—(Received from Colonial Office, November 24.)*

(Telegraphic.)

DOWNING STREET, October 31, 1902.

United States' Secretary of State unofficially renews proposal for appointment of tribunal, members of which should merely record their reasoned opinions. Are your ministers disposed to consider this suggestion, which would at least afford opportunity to public in United States and Canada of comparing respective cases?

*Lord Minto to Mr. Chamberlain.*

OTTAWA, November 18, 1902.

Referring to your despatch of October 31, concerning the proposal of the United States for the appointment of a tribunal of jurists to record their reasoned opinions upon the Alaska boundary question, my ministers, while declining to give final assent to such proposal, would be disposed to consider it favourably, provided the reference to the tribunal should include all aspects of the question. They think that such a reference as was outlined in my despatch of last November, 1901, might be acceptable.

MINTO.

*Sir M. Herbert to the Marquess of Lansdowne.—(Received December 22.)*

WASHINGTON, December 8, 1902.

MY LORD,—With reference to my telegram of to-day, I have the honour to report that, in obedience to Your Lordship's instructions, I called on Mr. Hay this morning, and informed him that His Majesty's government were prepared to entertain favourably the suggestion which he had made to me on October 17 last in regard to the appointment of an Anglo-American arbitration tribunal, composed of an equal number of judges nominated by each side. I stated at the same time that in agreeing to this proposal, Your Lordship made it a condition that the terms of reference should be so framed as to include all aspects of the question, and I suggested that they should be formulated on the lines of the inclosed memorandum, which I handed to him.



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Mr. Hay expressed satisfaction at my communication and reiterated the opinion expressed to me on October 17 in favour of the appointment of such a tribunal as being the only means of settlement of the Alaska boundary dispute which would be acceptable to the people of this country. He promised that he would consult the President at once, and, if he approved, would prepare the draft terms of reference as soon as possible for submission to His Majesty's government.

I gathered from the conversation which subsequently took place that Mr. Hay is willing to consent, in the event of the judicial tribunal arriving at an agreement, that its decision shall be final, and I venture to express the opinion that, if the Senate will ratify such a stipulation, it would be preferable to the proposal that the members of the tribunal should record their reasoned opinions only.

In discussing the composition of the tribunal, I expressed the hope that all the American members would be judges of the Supreme Court of the United States, as their appointment would give the tribunal more weight.

Mr. Hay agreed with this view, but feared it would be difficult to carry out owing to the pressure of business before the Supreme Court, which could ill spare so many of its members at the same time.

I have, &c.,

(Signed) MICHAEL H. HERBERT.

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*Colonial Office to Lord Minto.*

LONDON, December 11, 1902.

Alaska boundary. Referring to your cable of November 18, presume that in event of majority of tribunal agreeing on answer to the reference submitted, decision would be accepted as final by your ministers. Please cable reply.

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*Lord Minto to Colonial Office.*

December 15, 1902.

Alaska boundary. Your cable 11th inst. Am asked by my ministers to state that they cannot give proper consideration to question submitted till exact text of proposed reference or the composition of tribunal is before them. On receipt of this information they will communicate with Sir Wilfrid Laurier (who is absent from Ottawa), and will send reply as soon as possible.

MINTO.

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*Personal.*

WASHINGTON, December 18, 1902.

The Honourable JOHN HAY, &c., &c.:

Since our interview this morning I have had time to examine the draft Alaska boundary treaty which you then handed to me.

You will remember that I told you on the 8th inst. that Lord Lansdowne was prepared to entertain favourably the idea of a judicial tribunal, provided that the terms of reference were framed so as to include all aspects of the question.

Section 5 of Article IV of the draft treaty does not, it seems to me, fulfil this requirement, for it only gives prominence to the American contention that the treaty



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of 1825 was intended to give Russia a strip of coast of at least ten marine leagues on the mainland, separating the British possessions from the bays, ports, inlets, havens and waters of the ocean. The point from which this strip of land is to be measured is not apparently mentioned as an issue, and the Canadian contention that the line shall follow the crest of the mountains parallel to the coast, but so as to include bays, ports and inlets, would be excluded.

Under this reference the jurists would hold that the only point to be decided would be the width of the strip which is to separate the British possessions from access to all waters, even to bays, ports, inlets and havens.

I fear, therefore, that Lord Lansdowne could never accept this section as it stands, and I trust that it will be possible for your government to agree to a modification of the draft, so as to leave it to the jurists to decide whether the boundary line should go round all bays, ports, inlets and havens, or whether it should, following the crest of the mountains, pass across bays, ports, inlets and havens.

As I have a messenger to-morrow afternoon, I should be glad to call at the Department of State to-morrow morning to discuss the matter, if you can spare time to receive me.

MICHAEL H. HERBERT.

WASHINGTON, December 19, 1902.

MY LORD,—With reference to my despatch No. 333, confidential, of the 8th instant, Mr. Hay handed to me yesterday a draft treaty for the settlement of the Alaska boundary by a judicial tribunal, \* \* \* \* \* He stated that all the terms of reference suggested by Your Lordship had been accepted, except section 6 (see memorandum inclosed in my despatch No. 333), which had been altered. I asked his permission to take the document home and study it, and I promised to let him know my views in regard to it as soon as possible. On examination of the treaty I found that with the exception of the addition of the words 'if they exist' between the word 'what' and the words 'are the' in section 5 of my memorandum, all the sections excepting No. 6 (which in Mr. Hay's draft was made No. 5) were couched in the same language as the reference I had suggested. Section 5 of the draft, however, repeated exactly the wording of sub-section 2 of Article IV of the draft treaty submitted by Mr. Hay to Lord Pauncefoot in May, 1901, and I accordingly sent a note to Mr. Hay in the evening, copy of which I have the honour to inclose, stating that I felt sure Your Lordship would be unable to accept this reference, as it only put forward the American contention, and that that of Canada would be excluded by it. I called at the Department of State this morning and repeated the arguments contained in my note, and after a short discussion Mr. Hay said that in view of my objections, and of his wish to arrive at a settlement, he was prepared to modify the draft in the following manner: To let the first five sections stand as proposed in his draft of yesterday, omitting the words 'if not, how should said line of demarcation be traced to conform to the provisions of the said treaty' at the end of section 5. Then to take No. 6 as follows: 'If the foregoing question (No. 5) should be answered in the negative, and in the event of the summit of such mountains proving to be in places more than ten marine leagues from the coast, should the width of the *lisière* which was to belong to Russia be measured (1) from the mainland coast of the ocean, strictly so-called, along a line perpendicular thereto, or (2) was it the intention and meaning of the said convention that where the mainland coast is indented by deep inlets forming part of the territorial waters of Russia, the width of the *lisière* was to be measured (a) from the line of the general direction of the mainland coast, or (b) from the line separating the waters of the ocean from the territorial waters of Russia, or (c) from the heads of the aforesaid inlets.' (Your Lordship will observe that the word 'mainland' has been inserted before the word 'coast' all through this section.)



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Then to change the number of the original section 6 of Mr. Hay's draft of yesterday into section 7 in the new draft.

I consented to this modification, and said I was now prepared to send the draft home for your Lordship's approval.

The final paragraph of Article III. is identical with the language of Article III. of the May draft treaty.

\* \* \* \* \*

Article VI. provides that the decision shall be final, and Mr. Hay has consented to use the same language as that contained in Lord Pauncefote's memorandum of February last.

I have the honour to transmit copy of the draft treaty as amended, and I earnestly hope that its provisions will meet with the approval of His Majesty's government and of that of Canada.

MICHAEL H. HERBERT.

### ALASKA BOUNDARY.

The United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland, equally desirous for the friendly and final adjustment of the differences which exist between them in respect to the true meaning and application of certain clauses of the convention between Great Britain and Russia, signed under date of February 28-16, A.D. 1825, which clauses relate to the delimitation of the boundary line between the territory of Alaska, now a possession of the United States, and the British possession in North America, have resolved to provide for the submission of the questions as hereinafter stated to an arbitral tribunal, and to that end have appointed their respective plenipotentiaries as follows :—

The President of the United States of America; John Hay, Secretary of State of the United States; and

His Britannic Majesty; the Right Honourable Sir Michael Herbert, K.C.M.G., C.B., His Britannic Ambassador Extraordinary and Plenipotentiary;

Who, after an exchange of their full powers, which were found to be in good and due form, have agreed upon the following articles :—

#### ARTICLE I.

A tribunal shall be immediately appointed to consider and decide the questions set forth in Article IV. of this convention. The tribunal shall consist of six impartial jurists of repute, who shall consider judicially the questions submitted to them, each of whom shall first subscribe an oath that he will impartially consider the arguments and evidence presented to the tribunal, and will decide thereupon according to his true judgment. Three members of the tribunal shall be appointed by the President of the United States, and three by His Britannic Majesty. All questions considered by the tribunal, including the final award, shall be decided by a majority of all the members thereof.

In case of the refusal to act, or of the death, incapacity or abstention from service of any of the persons so appointed, another impartial jurist of repute shall be forthwith appointed in his place by the same authority which appointed his predecessor.

The tribunal may appoint a secretary and a bailiff to perform such duties as they may prescribe, and may employ scientific experts, if found to be necessary, and may fix a reasonable compensation for such officers. The tribunal shall keep an accurate record of all its proceedings.



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Each of the high contracting parties shall make compensation for the services of the members of the tribunal of its own appointment, and of any agent, counsel or other person employed in its behalf, and shall pay all costs incurred in the preparation of its case. All expenses reasonably incurred by the tribunal in the performance of its duties shall be paid by the respective governments in equal moieties.

The tribunal may, subject to the provisions of this convention, establish all proper rules for the regulation of its proceedings.

## ARTICLE II.

Each of the high contracting parties shall also name one person to attend the tribunal as its agent.

The written or printed case of each of the two parties, accompanied by the documents, the official correspondence and all other evidence in writing or print on which each party relies, shall be delivered in duplicate to each member of the tribunal, and to the agent of the other party, as soon as may be after the organization of the tribunal, but within a period not exceeding two months from the date of the exchange of ratifications of this convention.

Within two months after the delivery on both sides of the written or printed case, either party may, in like manner, deliver in duplicate to each member of the tribunal, and to the agent of the other party, a counter case and additional documents, correspondence and evidence in reply to the case, documents, correspondence and evidence so presented by the other party. The tribunal may, however, extend this last mentioned period when in their judgment it becomes necessary by reason of special difficulties which may arise in the procuring of such additional papers and evidence.

If in the case submitted to the tribunal either party shall have specified or referred to any report or document in its own exclusive possession without annexing a copy, such party shall be bound, if the other party shall demand it, within thirty days after the delivery of the case, to furnish to the party applying for it a duly certified copy thereof; and either party may call upon the other, through the tribunal, to produce the original or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the tribunal may require; and the original or copy so requested shall be delivered as soon as may be and within a period not exceeding forty days after receipt of notice.

Each party may present to the tribunal all pertinent evidence, documentary, historical, geographical, or topographical, including maps and charts, in its possession or control and applicable to the rightful decision of the questions submitted; and if it appears to the tribunal that there is evidence pertinent to the case in the possession of either party, and which has not been produced, the tribunal may, in its discretion, order the production of the same by the party having control thereof.

It shall be the duty of each party through its agent or counsel, within two months from the expiration of the time limited for the delivery of the counter case on both sides, to deliver in duplicate to each member of the said tribunal, and to the agent of the other party, a written or printed argument, showing the points and referring to the evidence upon which his government relies, and either party may also support the same before the tribunal by oral argument or counsel. The tribunal may, if they shall deem further elucidation with regard to any point necessary, require from either party a written, printed or oral statement or argument upon the point; but in such case the other party shall have the right to reply thereto.

## ARTICLE III.

It is agreed by the high contracting parties that the tribunal shall consider in the settlement of the questions submitted to its decision the treaties respectively concluded between His Britannic Majesty and the Emporor of All the Russias, under



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date 28-16 February, A.D., 1825, and between the United States of America and the Emperor of All the Russias, concluded under date of March 30-18. A.D. 1867 ; and particularly the Articles III, IV, V, of the first mentioned treaty, which in the original text are word for word as follows :—

‘ La ligne de démarcation entre les Possessions des Hautes Parties Contractantes sur la Côte du Continent et les Iles de l’Amérique Nord-Ouest, sera tracée ainsi qu’il suit :

‘ A partir du point le plus méridional de l’Ile dite *Prince of Wales*, lequel point se trouve sous la parallèle du 54me degré 40 minutes de latitude nord, et entre le 131me et le 133me degrés de longitude ouest (Méridien de Greenwich), la dite ligne remontera au Nord le long de la passe dite *Portland Channel*, jusqu’au point de la terre ferme ou elle atteint le 56me degré de latitude Nord ; de ce dernier point la ligne de démarcation suivra la crête des montagnes situées parallèlement à la côte, jusqu’au point d’intersection du 141me degré de longitude Ouest (même Méridien), et, finalement du dit point d’intersection, la même ligne méridienne du 141me degré formera, dans son prolongement jusqu’à la mer Glaciale, la limite entre les Possessions Russes et Britanniques sur le continent de l’Amérique Nord-Ouest.’

‘ IV. Il est entendu, par rapport à la ligne de démarcation déterminée dans l’Article précédent :

‘ 1. Que l’isle dite *Prince of Wales* appartiendra toute entière à la Russie.

‘ 2. Que partout où la crête des montagnes qui s’étendent dans une direction parallèle à la côte depuis le 56me degré de latitude Nord au point d’intersection du 141me degré de longitude Ouest, se trouverait à la distance de plus de dix lieues marines de l’océan, la limite entre les Possessions Britanniques et la lisière de côte mentionnée ci-dessus comme devant appartenir à la Russie, sera formée par une ligne parallèle aux sinuosités de la côte, et qui ne pourra jamais en être éloignée que de dix lieues marines.’

‘ V. Il est convenu en outre, que nul établissement ne sera formé par l’une des deux parties dans les limites que les deux Articles précédents assignent aux Possessions de l’autre. En conséquence, les sujets britanniques ne formeront aucun Etablissement soit sur la côte, soit sur la lisière de terre ferme comprise dans les limites des Possessions Russes, telles qu’elles sont designées dans les deux Articles précédents ; et, de même, nul Etablissement ne sera formé par des sujets Russes au delà des dites limites.’

The tribunal shall also take into consideration any action of the several governments or of their respective representatives preliminary or subsequent to the conclusion of said treaties so far as the same tends to show the original and effective understanding of the parties in respect to the limits of their several territorial jurisdictions under and by virtue of the provisions of said treaties.

#### ARTICLE IV.

Referring to Articles III., IV. and V., of the said treaty of 1825, the said tribunal shall answer and decide the following questions :—

1. What is intended as the point of commencement of the line ?
2. What channel is the Portland channel ?
3. What course should the line take from the point of commencement to the entrance to Portland channel ?
4. To what point on the 56th parallel is the line to be drawn from the head of the Portland channel, and what course should it follow between these points ?
5. In extending the line of demarcation northward from said point on the parallel of the 56th degree of north latitude, following the crest of the mountains situated parallel to the coast until its intersection with the 141st degree of longitude west of Greenwich, subject to the condition that if such line should anywhere exceed the distance of ten marine leagues from the ocean, then the boundary between the British and



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the Russian territory should be formed by a line parallel to the sinuosities of the coast and distant therefrom not more than ten marine leagues, was it the intention and meaning of said convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe or strip of coast on the mainland, not exceeding ten marine leagues in width, separating the British possessions from the bays, ports, inlets, havens and waters of the ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich?

6. If the foregoing question should be answered in the negative, and in the event of the summit of such mountains proving to be in places more than ten marine leagues from the coast, should the width of the *lisière*, which was to belong to Russia, be measured (1) from the mainland coast of the ocean, strictly so-called, along a line perpendicular thereto, or (2) was it the intention and meaning of the said convention that where the mainland coast is indented by deep inlets forming part of the territorial waters of Russia, the width of the *lisière* was to be measured (a) from the line of the general direction of the mainland coast, or (b) from the line separating the waters of the ocean from the territorial waters of Russia, or (c) from the heads of the aforesaid inlets?

7. What, if any exist, are the mountains referred to as situated parallel to the coast, which mountains when within ten marine leagues from the coast, are declared to form the eastern boundary?

## ARTICLE V.

The tribunal shall assemble for their first meeting at London as soon as practicable after receiving their commissions; and shall themselves fix the times and places of all subsequent meetings.

The decision of the tribunal shall be made so soon as possible after the conclusion of the arguments in the case, and within three months thereafter, unless the President of the United States and His Britannic Majesty shall by common accord extend the time therefor. The decision shall be made in writing, and dated, and shall be signed by the members of the tribunal assenting to the same. It shall be signed in duplicate, one copy whereof shall be given to the agent of the United States of America for his government, and the other to the agent of His Britannic Majesty for his government.

## ARTICLE VI.

When the high contracting parties shall have received the decision of the tribunal upon the questions submitted as provided in the foregoing articles, which decision shall be final and binding upon all parties, they will at once appoint, each on its own behalf, one or more scientific experts who shall with all convenient speed proceed together to lay down the boundary line in conformity with such decision.

Should there be, unfortunately, a failure by a majority of the tribunal to agree upon any of the points submitted for their decision, it shall be their duty to so report in writing to their respective governments through their respective agents. Should there be an agreement by a majority upon a part of the questions submitted, it shall be their duty to sign and report their decision upon the points of such agreement in the manner hereinbefore prescribed.

## ARTICLE VII.

The present convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate, and by His Britannic Majesty, and the ratifications shall be exchanged in Washington or in London so soon as the same may be effected.



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In faith whereof we, the respective plenipotentiaries, have signed this treaty and have hereunto fixed our seals.

Done at Washington in duplicate this 24th day of January, A.D. 1903.

MICHAEL H. HERBERT,  
JOHN HAY.

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*The Secretary of State for the Colonies to Lord Minto.*

LONDON, January 6, 1903.

Alaska.—Shall be glad to have as soon as possible views of your ministers on draft boundary treaty which was inclosed in Sir Michael Herbert's despatch, No. 347, of December 19.

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*Lord Minto to Sir Michael Herbert.*

OTTAWA, January 12, 1903.

Referring to the last proposed Alaskan boundary treaty, a draft of which you submitted to me, my ministers are satisfied with the questions to be submitted to the tribunal, but they still have the same objection to the composition of the proposed tribunal, and before assenting to it, they would hope that another effort should be made to have the questions to be adjudicated upon submitted either to a board of arbiters composed in part of independent jurists, not subjects of either state, as proposed in my despatch to Mr. Chamberlain of November, 1901, or to the Hague tribunal.

MINTO.

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LONDON, January 12, 1903.

With reference to my telegram of January 6, relative to the Alaska boundary  
\* \* \* \* \*

Sir M. Herbert advocates strongly three judges of the United States Supreme Court with the Lord Chief Justice of England, the Chief Justice of Canada and the Judicial High Court of Great Britain on one side, as forming a tribunal which would command the highest confidence of all concerned.

Your ministers will doubtless give this matter their serious consideration.

Desired early expression of views of your ministers as to terms of draft treaty, final tribunal decision and its composition. Telegraph reply.

SECRETARY OF STATE FOR COLONIES.

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*Sir Michael Herbert to Lord Minto.*

WASHINGTON, January 18, 1903.

I have despatched the following to-day to the Foreign Office:—

*Re Alaska Boundary.*—Secretary of State has again asked me for an answer to-day on the ground that present moment they might be favourable for ratification of treaty and, if the question is further postponed, Senators' attitude may change.

HERBERT.



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*Minto, Ottawa.*

WASHINGTON, January 19, 1903.

Alaska Treaty, Canadian reply.

Following sent to Foreign Office to-day. I informed Mr. Hay to-day that the Canadian government were satisfied as to terms of reference, but they objected to composition of tribunal and hoped that the United States government would agree to have the questions to be adjudicated upon submitted either to Foreign Office or to the Hague tribunal.

At the same time I pointed out that the Hague tribunal was especially intended to settle disputes in regard to interpretation of treaties. Mr. Hay said in reply that in view of the alterations he had made in regard to terms of reference he had hoped for a spontaneous acceptance of the treaty, and he regretted that the Canadian government still objected to the tribunal's composition. He could only repeat what he had often said before, that the form of arbitration proposed was the only one acceptable to the President, and that a treaty involving submission of question to foreign arbitration or to Hague tribunal would stand no chance of ratification by the United States Senate.

HERBERT.

*Minto, Ottawa.*

LONDON, January 19, 1903.

Referring to Sir Michael Herbert's telegram stating that the United States government is unable to agree to modification of tribunal, I trust that your responsible advisers will now agree to his being instructed to sign the draft treaty. Please reply by telegram as soon as possible.

Secret.

Should be glad to give an early answer to my telegram of January 12 as to British Ambassador Washington's proposal that Chief Justice of England, Chief Justice of Canada and Judicial High Court of Appeal of Great Britain should be appointed as British members of the tribunal.

SECRETARY OF STATE.

*Colonial Office to Lord Minto.*

LONDON, January 20, 1903.

*Re* British Ambassador at Washington's cable, stating that Mr. Hay would prefer London as place of meeting, I should be glad to receive early expression of your ministers' views as to this.

SECRETARY OF STATE.

*Lord Minto to Secretary of State for the Colonies.*

OTTAWA, January 21, 1903.

My ministers, whilst still regretting that proposed tribunal will not be constituted so as to insure certainty of a final decision being reached on the reference, being satisfied with the terms of that reference, will agree to accept treaty as contained in the draft submitted to them.

With regard to composition of tribunal, my ministers are of opinion that it is premature to adopt any final arrangement; it is sufficient now to have it clearly understood that members of the court to be appointed by His Majesty shall be jurists of repute, and British subjects.

They will be quite satisfied if London is selected for sittings of the court.



SESSIONAL PAPER No. 46a

*To Lord Minto.*

LONDON, February 18, 1903.

H.M. Ambassador, Washington, cables President will appoint Mr. Root, Secretary of State for War, and Senators Lodge and Turner, as American members of Commission Alaska Boundary.

Should be glad to have views of your ministers as to British commission.

SECRETARY OF STATE FOR COLONIES.

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*Lord Minto to Colonial Office.*

OTTAWA, February 19, 1903.

Referring to your telegram of the 18th instant, my ministers respectfully but strongly represent that Mr. Root as a member of the United States government directly concerned is therefore one of the disputants in the case, and also that Senators Lodge and Turner cannot be accepted in the class of impartial jurists provided for in the treaty, having both already emphatically declared themselves against the Canadian side of the case.

Proposed appointments would be looked upon by my government as violation of important article in treaty.

(Signed) MINTO.

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*Lord Minto to Colonial Office.*

OTTAWA, February 21, 1903.

Supplementing my last despatch, my ministers call attention to the fact that they agreed to a court of six members on the stipulation conveyed in the treaty that members of said court would be impartial jurists, and in the hope that judges of the highest courts in the United States would be appointed as American commissioners, my ministers also agreeing that British commissioners should be judges of the highest standing.

My ministers most strongly represent that this consideration having been material in causing their assent to the treaty should be made good, otherwise the ground upon which they based their assent would be changed, and it is feared whole situation would require to be reconsidered.

My ministers would be ready to implement their part of the understanding as to the composition of British side of the commission, but do not think it advisable to submit their views until question raised about American commission is satisfactorily disposed of.

MINTO.

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*Lord Onslow to Governor General, Ottawa. .*

LONDON, February 27, 1903.

With reference to your telegram dated the 19th and 21st of February, selection of American members of tribunal has been the source of as much surprise to His Majesty's government as to your ministers. Situation is full of difficulty, and His Majesty's government earnestly desire to have concurrence of your ministers in dealing with it.

It seems certain to His Majesty's government that it would be useless to press the United States government to withdraw names put forward, and arguments relative to



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the fitness of the three American representatives, however convincing, can have no practical results.

His Majesty's government have, therefore, to choose between breaking off negotiations altogether or accepting American nominations, and appointing as their colleagues representatives who will meet the altered circumstances of the case. They would regard the first alternative as a grave misfortune to the interests of Canada, and would prefer that the inquiry should proceed, in confident hope that Canadian or British interests would not be prejudiced thereby, as, even in the event of failure, much important information upon controverted points would be collected, and placed before the public, and reasonable settlement at some future time thereby facilitated.

His Majesty's government earnestly hope that these considerations may be carefully weighed by your ministers, and that they will favour His Majesty's government, if they agree with the opinion stated above, with an expression of their views as to the most advantageous composition of the British side of the tribunal.

ONSLOW.

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*Sir M. Herbert to Lord Minto.*

WASHINGTON, D.C., March 6, 1903.

Secretary of State has officially notified to me to-day the appointment of Messrs. Root, Lodge and Turner as American members of the Alaska tribunal.

HERBERT.

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*Lord Minto to Colonial Office.*

OTTAWA, March 6, 1903.

Referring to your despatch of February 27, my ministers regard the situation with much anxiety. They desire to emphasize the fact that their assent to a treaty which provided for the creation of a tribunal so composed as not to insure finality was obtained on the stipulation in the treaty that the members of the court would be impartial jurists of repute. \* \* \* \* Their doubts as to the effectiveness of the contemplated arrangement as a means of settlement were in some degree modified by the assurance that the members of the tribunal would approach the subject with unbiassed minds, and that a judicial interpretation of the treaty of 1825 would be obtained. The appointment to the tribunal by the United States government of gentlemen who are not judges, and whose known views leave no room for expectation of a judicial consideration of the question, changes the whole situation. If the whole question were now open to be dealt with entirely from the point of view of Canadian interests, my ministers would hesitate to advise any further participation in proceedings.

\* \* \* \* \*

My ministers have observed from the public press, and have also been officially informed that while the matter is still under their consideration, the treaty has been confirmed by His Majesty's government, and an exchange of ratifications has already taken place at Washington. It is presumed that this fact precludes further discussion, and my ministers will, therefore, proceed to do whatever is necessary on their part to make good the engagements of His Majesty's government, but they must reserve the right to submit to the Canadian parliament the whole correspondence, or such statement of the case as will fully explain the whole matter, and especially the manner in which the assent of Canada was obtained.

My ministers do not agree with the suggestion that the altered circumstances justify a departure on the British side from the disposition previously manifested respecting the composition of the tribunal. If members of the tribunal are to be appointed by His Majesty's government, my ministers are of opinion that only judges of the higher courts, who in the best sense of the words would be impartial jurists of repute, should be chosen.



SESSIONAL PAPER No. 46a

*Minto, Ottawa.*

LONDON, March 7, 1903.

The ratifications of the Alaska Boundary Treaty were exchanged on 3rd instant.

Time for the preparation of the case, Article II, has consequently begun to run against us, and it is important that composition of British half of court, also appointment of British agent, should be settled without delay.

Hope, therefore, your responsible advisers will favour us with their views on these appointments as early as possible.

SECRETARY OF STATE.

*Lord Minto to Colonial Office.*

OTTAWA, March 7, 1903.

In view of the short time given for preparation of the case, my ministers desire to proceed immediately, and therefore suggest an early settlement of preliminaries.

As to the composition of tribunal, my ministers suggest Chief Justice of England and two Canadian judges, names to be telegraphed hereafter.

As to counsel, my ministers desire that Mr. Edward Blake, K.C., London, and Mr. Christopher Robinson, K.C., Toronto, be of counsel to uphold the British contention, and junior counsel.

Under that clause of the treaty which provides for the appointment of an agent to represent each party before the tribunal, my ministers desire that Mr. Clifford Sifton, Canadian Minister of the Interior, be appointed to fill such position.

MINTO.

*Lord Minto to Mr. Chamberlain.*

OTTAWA, March 17, 1903.

In addition to Chief Justice of England, my ministers propose Sir Louis Jetté, a retired judge of the Superior Court of the province of Quebec, and now Lieutenant Governor of Quebec, and Justice Armour, of the Supreme Court of Canada, as members of the Court of Imperial Jurists under treaty for settlement of boundary of Alaska.

MINTO.

*Mr. Sifton to the Marquess of Lansdowne.*

(Received October 22.)

ST. STEPHEN'S HOUSE, WESTMINSTER, S.W., October 21, 1903.

MY LORD,—I have the honour to send herewith the original Award of the Alaska Boundary Tribunal, and the reasons for the judgment of Lord Alverstone, Messrs. Root, Lodge and Turner; also those of Mr. Aylesworth. The reasons for judgment of Sir



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Louis Jetté having been written in French are, I am informed, being translated, and will be signed and filed by him in English. Upon receipt I shall at once forward them to be placed with the Award. I am also sending herewith two copies of the Award and two copies of the map which accompanies the Award. I beg to request that the proper officer of the Department of Foreign Affairs may be instructed to certify these copies of Award and maps as true copies, so that I can forward them to the Government of Canada, to be retained among the Canadian boundary records.

I have, &c.,

(Sd.) CLIFFORD SIFTON:



# A W A R D

## OF THE

### ALASKA BOUNDARY TRIBUNAL

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Whereas by a convention signed at Washington on January 24, 1903, by plenipotentiaries of and on behalf of His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and of and on behalf of the United States of America, it was agreed that a tribunal should be appointed to consider and decide the questions hereinafter set forth, such tribunal to consist of six impartial jurists of repute, who should consider judicially the questions submitted to them, each of whom should first subscribe an oath that he would impartially consider the arguments and evidence presented to the said tribunal, and would decide thereupon according to his true judgment, and that three members of the said tribunal should be appointed by His Britannic Majesty and three by the President of the United States:

And whereas, it was further agreed by the said convention that the said tribunal should consider in the settlement of the said questions submitted to its decision the treaties respectively concluded between His Britannic Majesty and the Emperor of all the Russias, under date of February the 28th (16), A.D., 1825, and between the United States of America and Emperor of all the Russias, concluded under date of March 13 (30), A.D., 1867, and particularly the articles III, IV and V of the first mentioned treaty, and should also take into consideration any action of the several governments or of their respective representatives, preliminary or subsequent to the conclusion of the said treaties, so far as the same tended to show the original and effective understanding of the parties in respect to the limits of their several territorial jurisdictions, under and by virtue of the provisions of the said treaties.

And whereas, it was further agreed by the said convention, referring to Articles III, IV and V of the said treaty of 1825, that the said tribunal should answer and decide the following questions:—

1. What is intended as the point of commencement of the line ?
2. What channel is the Portland channel ?
3. What course should the line take from the point of commencement to the entrance to Portland channel ?
4. To what point on the 56th parallel is the line to be drawn from the head of the Portland channel, and what course should it follow between these points ?
5. In extending the line of demarcation northward from said point on the parallel of the 56th degree of north latitude, following the crest of the mountains situated parallel to the coast until its intersection with the 141st degree of longitude west of Greenwich, subject to the conditions that if such line should anywhere exceed the distance of 10 marine leagues from the ocean, then the boundary between the British and the Russian territory should be formed by a line parallel to the sinuosities of the coast and distant therefrom not more than 10 marine leagues, was it the intention and meaning of the said convention of 1825 that there should remain in the exclusive



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possession of Russia a continuous fringe, or strip of coast on the mainland not exceeding 10 marine leagues in width, separating the British possessions from the bays, ports, inlets, havens, and waters of the ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich ?

6. If the foregoing question should be answered in the negative, and in the event of the summit of such mountains proving to be in places more than 10 marine leagues from the coast, should the width of the *lisière*, which was to belong to Russia, be measured (1) from the mainland coast of the ocean, strictly so-called, along a line perpendicular thereto, or (2) was it the intention and meaning of the said convention that where the mainland coast is indented by deep inlets forming part of the territorial waters of Russia, the width of the *lisière* was to be measured (a) from the line of the general direction of the mainland coast, or (b) from the line separating the waters of the ocean from the territorial waters of Russia, or (c) from the heads of the aforesaid inlets ?

7. What, if any exist, are the mountains referred to as situated parallel to the coast, which mountains, when within 10 marine leagues from the coast, are declared to form the eastern boundary ?

And whereas, His Britannic Majesty duly appointed Richard Everard, Baron Alverstone, G.C.M.G., Lord Chief Justice of England, Sir Louis Amable Jetté, K.C.M.G., Lieutenant Governor of the province of Quebec, and Allen Bristol Aylesworth, one of His Majesty's Counsel; and the President of the United States of America duly appointed the Honourable Elihu Root, Secretary of War of the United States, the Honourable Henry Cabot Lodge, Senator of the United States from the State of Massachusetts, and the Honourable George Turner, of the State of Washington, to be members of the said tribunal.

Now therefore, we, the undersigned, having each of us first subscribed an oath, as provided by the said convention, and having taken into consideration the matters directed by the said convention to be considered by us, and having judicially considered the said questions submitted to us, do hereby make answer and award as follows :—

**In answer to the first question—**

The tribunal unanimously agrees that the point of commencement of the line is Cape Muzon.

**In answer to the second question—**

The tribunal unanimously agrees that the Portland channel is the channel which runs from about 55° 56' north latitude, and passes to the north of Pearse and Wales islands.

A majority of the tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner, decides that the Portland channel, after passing to the north of Wales island, is the channel between Wales island and Sitklan island, called Tongass channel. The Portland channel above mentioned is marked throughout its length by a dotted red line from the point B to the point marked C on the map signed in duplicate by the members of the tribunal at the time of signing their decision.

**In answer to the third question—**

A majority of the tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner, decides that the course of the line from the point of commencement to the entrance to Portland channel is the line marked A B in red on the aforesaid map.

**In answer to the fourth question—**

A majority of the tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner, decides that the point to which the line is to be drawn from the head of the Portland channel is the point on the 56th parallel of latitude marked D on the aforesaid map, and the course which the line should follow is drawn from C to D on the aforesaid map.



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In answer to the fifth question—

A majority of the tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner, decides that the answer to the above question is in the affirmative.

Question 5 having been answered in the affirmative, question 6 requires no answer.

In answer to the seventh question—

A majority of the tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner, decides that the mountains marked S on the aforesaid map are the mountains referred to as situated parallel to the coast on that part of the coast where such mountains marked S are situated, and that between the points marked P (mountain marked S, 8,000) on the north, and the point marked T (mountain marked S, 7,950), in the absence of further survey, the evidence is not sufficient to enable the tribunal to say which are the mountains parallel to the coast within the meaning of the treaty.

In witness whereof we have signed the above written decision upon the questions submitted to us.

Signed in duplicate this 20th day of October, 1903.

(Signed)

ALVERSTONE.  
ELIHU ROOT.  
HENRY CABOT LODGE.  
GEORGE TURNER.

Witness:

(Signed) REGINALD TOWER,  
*Secretary.*

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## OPINION BY LORD ALVERSTONE. (1)

### *Second Question.*

#### WHAT CHANNEL IS THE PORTLAND CHANNEL ?

The answer to this question, as indicated by the learned counsel on both sides, depends upon the simple question: What did the contracting parties mean by the words 'the channel called the Portland channel' in Article III of the treaty of 1825? This is a pure question of identity. In order to answer it one must endeavour to put oneself in the position of the contracting parties, and ascertain as accurately as possible what was known to them of the geography of the district so far as relates to the channel called the Portland channel.

There are certain broad facts which, in my opinion, establish beyond any reasonable question that the negotiators had before them Vancouver's maps, the Russian map (No. 5 in the British, No. 6 in the American atlas), Arrowsmith's maps (probably the map numbered 10 in the American atlas), and Faden's maps (British Appendix, pp. 10 and 11).

I have, moreover, no doubt that the negotiators were acquainted with the information contained in Vancouver's narrative. I do not think it necessary to state in detail the evidence which has led me to this conclusion beyond stating that, quite apart from the overwhelming probability that this was the case, there are passages in the documents which, in my judgment, establish it to demonstration, but for the purpose of my



reasons, it is sufficient to say that I have come to that clear conclusion after the most careful perusal of the documents.

I will now endeavour to summarize the facts relating to the channel called Portland channel, which the information afforded by the maps and documents to which I have referred, establish. The first and most important is that it was perfectly well known before, and at the date of the treaty, that there were two channels or inlets, the one called Portland channel, the other Observatory inlet, both of them coming out to the Pacific Ocean.

That the seaward entrance of Observatory inlet was between Point Maskelyne on the south and Point Wales on the north.

That one entrance of Portland channel was between the island now known as Kannaghunut and Tongas island.

That the latitude of the mouth or entrance to the channel called Portland channel, as described in the treaty and understood by the negotiators, was at  $54^{\circ} 45'$ .

The narrative of Vancouver refers to the channel between Wales island and Sitklan island, known as Tongas Passage, as a passage leading south-south-east towards the ocean—which he passed in hope of finding a more northern and westerly communication to the sea, and describes his subsequently finding the passage between Tongas island on the north and Sitklan and Kannaghunut on the south. The narrative and the maps leave some doubt on the question whether he intended the name Portland canal to include Tongas passage as well as the passage between Tongas island on the north and Sitklan and Kannaghunut island on the south. In view of this doubt, I think, having regard to the language, that Vancouver may have intended to include Tongas passage in that name, and looking to the relative size of the two passages, I think that the negotiators may well have thought that the Portland channel, after passing north of Pearse and Wales island, issued into the sea by the two passages above described.

For the purpose of identifying the channel, commonly known as Portland channel, the maps which were before the negotiators may be useful. This is one of the points upon which the evidence of contemporary maps as to general reputation is undoubtedly admissible. It is sufficient to say that not one of the maps which I have enumerated above in any way contradicts the precise and detailed situation of Portland channel and Observatory inlet given by Vancouver's narrative, and the other documents to which I have referred. The Russian map of 1802 shows the two channels distinctly; and the same may be said of Faden's maps, on which so much reliance was placed on the part of the United States.

I do not attach particular importance to the way in which names on the maps are written or printed, and therefore I do not rely upon the fact that, in the case of some of these contemporary maps, the words 'Portland channel' are written so as to include, within the name, the lower part of the channel which is in dispute. From long experience I have found that it is not safe to rely upon any such peculiarities.

After the most careful consideration of every document in this case, I have found nothing to alter or throw any doubt on the conclusion to which I have arrived, and there are certain general considerations which strongly support it.

Russia and Great Britain were negotiating as to the point on *the coast* to which Russian dominion should be conceded. It is unnecessary to refer to all the earlier negotiations, but it is distinctly established that Russia urged that her dominion should extend to  $55^{\circ}$  of latitude, and it was in furtherance of this object that Portland channel, which issues into the sea at  $54^{\circ} 45'$ , was conceded and ultimately agreed to by Great Britain. No claim was ever made by Russia to any of the islands south of  $54^{\circ} 45'$  except Prince of Wales Island, and this is the more marked because she did claim the whole of Prince of Wales Island, a part of which extended to about  $54^{\circ} 40'$ .

The islands between Observatory Inlet and the channel to which I have referred above as the Portland channel, are never mentioned in the whole course of the negotiations.



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It is suggested on behalf of the United States that Portland channel included both the channels, namely, the channel coming out between Point Maskelyne and Point Wales, and that running to the north of Pearse and Wales islands, and that, upon the doctrine of the thalweg, the larger channel must be taken as the boundary. It is sufficient to say that, in my opinion, there is no foundation for this argument. The lengths and the points of land at their entrances are given in the case of each channel by Vancouver in a way which precludes the suggestion that he intended to include both channels under one name, and it must be remembered that he was upon a voyage of discovery, and named these channels when he had discovered and explored them.

Inasmuch as the question submitted to us only involves the determination of the channel described in the treaty by the words already cited 'the channel called Portland channel,' subsequent history can throw no light upon this question; but I think it right to say that the use in the year 1853 of the name Portland Inlet in the British Admiralty chart, upon which much reliance was placed on behalf of the United States, has, in my opinion, no bearing upon the question, and the references to Tongas Island in 1835 as being on the frontier of the Russian straits, and in 1863 as being on the north side of the Portland Canal, and in 1869 as to Tongas being on the boundary between Alaska and British Columbia, are strongly confirmatory of the view at which I have arrived upon the consideration of the materials which were in existence at the date of the treaty.

I therefore answer the second question as follows:—

The channel which runs to the north of Pearse and Wales Islands, and issues into the Pacific between Wales Island and Sitklan Island.

(Signed) ALVERSTONE.

October 20, 1903.

## OPINION BY LORD ALVERSTONE (2).

*Fifth Question.*

IN extending the line of demarcation northward from said point on the parallel of the 56th degree of north latitude, following the crest of the mountains situated parallel to the coast until its intersection with the 141st degree of longitude west of Greenwich, subject to the conditions that if such line should anywhere exceed the distance of 10 marine leagues from the ocean, then the boundary between the British and the Russian territory should be formed by a line parallel to the sinuosities of the coast, and distant therefrom not more than 10 marine leagues, was it the intention and meaning of said convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe, or strip of coast on the mainland not exceeding 10 marine leagues in width, separating the British possessions from the bays, ports, inlets, havens, and waters of the ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich?

Stated shortly, I understand this question to ask whether the eastern boundary whether fixed by the crest of the mountains or by a distance of 10 marine leagues, was to run around the heads of bays, ports, inlets, havens, and waters of the ocean or not. I have come to the conclusion in the affirmative, viz., that the boundary, whether running along the summits or crests of the mountains, or—in the absence of mountains—at a distance of 10 marine leagues, was to run round the heads of the inlets, and not to cross them.



The language of the treaty of 1825 does not of itself enable this question to be answered distinctly—on the contrary, it contains the ambiguities which have given rise to the discussion upon the one side and the other.

Paragraph 2 of Article III states that the line of demarcation shall follow the summit of the mountains situated parallel to the coast ('parallèlement à la côte'). This is the clause upon which the question really depends, because in the event of mountains being found to exist, situated parallel to the coast within a distance of 10 marine leagues, no recourse need be had to Article IV. Article IV, however, is of importance, as it may tend to throw light upon what was the meaning of the word 'coast' in Article III; and the words in paragraph 2 of Article IV are 'wherever the summits of the mountains which extend in a direction parallel to the coast from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude shall prove to be at a distance of more than 10 marine leagues from the ocean.' It is, in my opinion correctly pointed out, on behalf of the United States, that the word 'coast' is an ambiguous term, and may be used in two, possibly in more than two senses. I think, therefore, we are not only entitled, but bound, to ascertain as far as we can from the facts which were before the negotiators the sense in which they used the word 'coast' in the treaty.

Before considering this latter view of the case, it is desirable to ascertain, as far as possible from the treaty itself, what it means, and what can be gathered from the language of the treaty alone. The parties were making an agreement, as the opening words of the treaty show, as to the limits of their respective possessions on the north-west coast of America, and there cannot be any question that the word 'coast' in Articles I and II refers to the north-west coast of America. In Article III the opening words, 'upon the coast of the continent,' also refer to the north-west coast of America. The first ambiguity arises upon the word 'coast' in the phrase 'parallel to the coast' in the description of the boundary in Article III, and as to the word 'coast' in the words 'parallel to the coast' in the second paragraph of Article IV, and the words 'the line of coast' and 'the windings of the coast' in the same paragraph. Article V does not bear directly upon the question in dispute, but the words 'or upon the border of the continent' ('lisière de terre ferme'), which follow the words 'upon the coast,' afford some slight guide to the meaning of the word 'coast' in Article III. The word 'coast' in Article VI evidently means the coast of the continent, as it is in contrast with the words 'ocean' and 'the interior.' I postpone the consideration of the meaning of the word 'coast' in Article VII, as it raises a very important question, which is in controversy. Considering these various passages, and the use made of the word 'coast' therein, do they enable one, without reference to the previous negotiations, to answer the question as to whether the strip of territory mentioned in Article III was to run round the heads of the bays and inlets, or to cross them? I am of opinion that they do not. The broad, undisputed facts are that the parties were engaged in making an agreement respecting an archipelago of islands off the coast, and some strip of land upon the coast itself. The western limit of these islands extends in some places about 100 miles from the coast, and the channels or passages between the islands and between the islands and the coast are narrow waters of widths varying from a few hundred yards to 12 miles. In ordinary parlance no one would call the waters of any of these channels or inlets between the islands, or between the islands and the mainland, 'ocean.' I agree with the view presented on behalf of Great Britain, that no one coming from the interior and reaching any of these channels, and particularly the head of the Lynn canal or Taku inlet, would describe himself as being upon the ocean; but, upon the other hand, it is quite clear that the treaty does regard some of these channels as ocean. For instance, to take points as to which no question arises, between Wrangell island, Mitkof island, and Kupreanoff island, all of which are north of latitude 56, it cannot, I think, be disputed that, for the purpose of the treaty, the waters between these islands and the mainland were included in the word 'ocean,' and that the coast upon which the eastern boundary of the *lisière* was to be drawn, was the coast of the oce-



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continent, and the mountains referred to in Article III were to be upon that coast, and the line referred to in paragraph 2 of Article IV was to be measured from those waters. This consideration, however, is not sufficient to solve the question; it still leaves open the interpretation of the word 'coast' to which the mountains were to be parallel.

Now, it is to be observed that *prima facie* the eastern boundary is to be fixed under Article III; as already pointed out, it is not necessary to have recourse to Article IV unless the mountains which correspond to those described in Article III prove to be at a distance of more than 10 marine leagues from the ocean. Assuming that the boundary is being determined in accordance with Article III, the mountains which are on the continent are to be parallel to the coast, and a person fixing the boundary under Article III would not leave the line which follows the summits or crest of the mountains unless that line was situated at more than 10 marine leagues from the ocean. As I have already pointed out, for a considerable part of the distance referred to in Article III, namely, from the southern end of Wrangell island up to the northern end of Kupreanoff island, the distance must be measured from the shore of these inland waters, which, and which alone, are the ocean referred to in Article IV. I am unable to find any words in the treaty which direct that the mountain line contemplated by Article III shall cross inlets or bays of the sea. In so far as the language of Article III of itself is a guide, it does not seem to me to contemplate such a state of things. Of course, if the main contention of Great Britain can be adopted, viz., that the words 'line of coast' and 'windings of the coast,' in paragraph 2 of Article IV, should it be necessary to have recourse to that paragraph, mean the general line of coast or the windings of the general coast, excluding inlets, the difficulty would disappear; but, in order to establish that position, it seems to me that Great Britain must show that the treaty uses the word 'coast' in the second paragraph of Article III, and in the second paragraph of Article IV, in that sense.

I see some broad objections to this view. In the first place, it necessitates the word 'coast' being used with two different meanings in the same clause; and, secondly, it makes it necessary to assume a view of the geographical position as being known to the negotiators, or to postulate that they assumed some definition, or common understanding, as to what the general line of the coast was.

There is, as far as I know, no recognized rule of international law which would by implication give a recognized meaning to the word 'coast' as applied to such sinuosities and such waters different from the coast itself.

As I have said more than once, the *locus in quo* to which the treaty was referring precludes the possibility of construing the word 'coast' in any particular article in any special way, if it does not refer to the coast-line of the continent. I think the words 'upon the border of the continent (*lisière de terre ferme*) comprised within the limits of the Russian possessions,' in Article V, rather confirm the view that Russia was to get a strip all along the continent, but I do not think that much reliance can be placed upon this because of the provision as to rivers and streams in Article VI.

Before leaving the treaty, it is, in my opinion, necessary to notice the very important argument put forward by Great Britain, founded upon Article VII. It was contended by Great Britain that the words 'gulfs, havens, and creeks on the coast mentioned in Article III,' referred only to the gulfs, havens, and creeks on the *lisière* or strip bounded as described in that article. If Great Britain could have made good that contention it would, in my opinion, have afforded the strongest argument that the treaty contemplated that the *lisière* or strip might cross bays, inlets, and arms of the sea; but in my opinion the contention cannot be successfully maintained.

The coast mentioned in Article III is, in my opinion, the coast of the continent, and the coast referred to in the second paragraph of Article IV is also the coast of the continent. The *lisière*, ascertained by drawing the boundary in accordance with the directions in Article III, is a strip upon the coast, and would not, I think, be naturally described by the words 'the coast mentioned in Article III.' My view is that the provisions of Article VII are perfectly general, and gave mutual rights for



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a period of ten years to Russia and Great Britain respectively in respect of their possessions upon the north-west coast of America.

Turning now from the consideration of the language of the treaty alone, what light is thrown upon this question by reference to the negotiations?

After most careful examination, I have been unable to find any passage which supports the view that Great Britain was directly or indirectly putting forward a claim to the shores or ports at the head of the inlets. This is not remarkable, inasmuch as no one at the time had any idea that they would become of any importance.

In March, 1824, among the objects desired to be secured by Great Britain are stated to be the 'embouchures' of such rivers as might afford an outlet. In the proposals referred to in the same letter the *lisière* is spoken of as a strip of land on the mainland, also as a strip of land on the coast of the continent. In the same documents the boundary is spoken of as 'the mountains which follow the windings of the coast,' and in correspondence of July, 1824, as 'following the sinuosities of the coast along the base of the mountains nearest the sea,' and 'the base of the mountains which follow the sinuosities of the coast,' and 'mountains designated as the boundary shall extend down to the very border of the coast.' It is sufficient to say that these passages certainly do not suggest, or imply, that the line from summit to summit will cross any substantial arm of the sea; and that it was not so understood by the negotiators for Great Britain, seems to me to follow from the passage in the letter of the 24th July, 1824, in which Great Britain consented to substitute the summit of the mountains for the seaward base, and suggested that a stipulation should be added that no fort should be established, or fortification erected, by either party, on the summit or in the passes of the mountains. It is difficult to see how such words could be applicable if it was contemplated that there might be a gap of 6 miles between summit and summit crossing the water. I have only to add upon this point that the language of both the British and Russian representatives, in reporting the conclusion of the treaty to their respective governments, is in accordance with the view which I have suggested.

I have felt it my duty to express the reasons which have led me to the conclusion to which I have come, that the answer to the Fifth Question should be in the affirmative, because I am constrained to take a view contrary to that presented by the advocates on behalf of Great Britain; but it must not be thought that I am insensible to the fact that there are strong arguments which might be urged in favour of the British view. I have little doubt that, if shortly after the making of the treaty of 1825 Great Britain and Russia had proceeded to draw the boundary provided by the treaty in accordance with the terms thereof, the difficulties, and, in certain events, the impossibilities, of drawing a boundary in strict accordance with the treaty would have been made evident. If, for instance, it had become necessary to draw a boundary in accordance with paragraph 2 of Article IV of the treaty, I believe that the view expressed by both the American and British authorities, that it is impossible to do so, would at once have become apparent. And in the same way, if the contention of the United States be well founded that no mountains exist on the coast which correspond with the treaty, a further difficulty would have been made manifest.

I can, therefore, well understand and appreciate the contention of Great Britain, that, under the existing state of circumstances, difficulties in delimiting the boundaries described must arise in one view, and might arise in any view. But these considerations, strong as they are in favour of a just and equitable modification of the treaty, do not in my opinion enable one to put a different construction upon the treaty. I think that the parties knew and understood what they were bargaining about, and expressed the terms of their bargain in terms to which effect can be given. The fact that when, sixty-five years later, the representatives of the two nations attempted to draw the boundary in accordance with the treaty, they were unable to agree upon its meaning, does not entitle me to put a different construction upon it.

In the view I take of the terms of the treaty itself, it is not necessary to discuss subsequent action. Had the terms of the treaty led me to a different conclusion, and



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entitled me to adopt the view presented by Great Britain. I should have felt great difficulty in holding that anything that had been done or omitted to be done by, or on behalf of, Great Britain, or that any conduct on her part, prevented her from insisting on the strict interpretation of the treaty; nor do I think that the representations of mapmakers that the boundary was assumed to run round the heads of the inlets could have been properly urged by the United States as a sufficient reason for depriving Great Britain of any rights which she had under the treaty, had they existed.

I therefore answer this Question in the affirmative.

(Signed) ALVERSTONE.

October 20, 1903.

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OPINION BY MR. AYLESWORTH.

As the majority of the members of the tribunal have arrived at a conclusion which is entirely opposed to what, 'according to my true judgment,' is the plain meaning of the treaty we have to interpret, it appears necessary that I should state as briefly as I am able a few of the many reasons which compel me to dissent altogether from their award.

With regard to the point of commencement of the boundary line no question arises, as all parties agree that it is Cape Muzon.

Upon the second question I quote the words of the President of this tribunal, the italics, except in one instance, being my own.

Among the facts relating to Portland channel he finds—

'That the latitude of the mouth or entrance to the channel called Portland channel, *as described in the treaty and understood by the negotiators was at 54° 45'.*

\* \* \* \* \*

Among the general considerations which support his conclusion he states that—

'Russia and Great Britain were negotiating as to the point *on the coast* to which Russian dominion should be conceded. It is unnecessary to refer to all the earlier negotiations; but it is distinctly established that Russia urged that her dominion should extend to 55° of latitude, and it was in furtherance of this object *that Portland channel, which issues into the sea at 54° 45', was conceded and ultimately agreed to by Great Britain.* No claim was ever made by Russia to *any of the islands south of 54° 45'* except Prince of Wales island, and this is the more marked because she did claim the whole of Prince of Wales island, a part of which extended to about 54° 40'.

'The islands between Observatory inlet and the channel, to which I have referred above as the Portland channel, are *never mentioned in the whole course of the negotiations.*'

These extracts are from Lord Alverstone's memorandum, expressing his considered judgment on this branch of the case. These conclusions have been arrived at after full discussion among ourselves of the answer which, upon the evidence, should be given to the second question—in which discussion each member of the tribunal has stated, at length, his individual views. Concurring, as I do, in the findings of fact stated in this memorandum, I should have contented myself with differing from the conclusion reached but for the course our proceedings have taken.

Consideration of the second question has been to-day resumed, and by unanimous vote of the tribunal it has been affirmed that each member, 'according to his true judgment,' believes the Portland channel mentioned in the treaty to be the channel extending towards the sea from latitude 55° 56', and lying to the north of Pearce and



Wales islands. But, notwithstanding this unanimous finding of fact, it has been, by the majority of the tribunal, decided that the boundary line, starting from Cape Muzon, shall run to the south, instead of to the north, of Kannaghunut and Sitklan islands, and so shall enter Portland channel between Sitklan and Wales islands.

This course for the boundary is directly opposed to the distinct findings made, and the whole line of reasoning adopted by the President in his memorandum of reasons for the decision. It is a line of boundary which was never so much as suggested in the written case of the United States, or by counsel, during the oral argument before us. No intelligible reason for selecting it has been given in my hearing. No memorandum in support of it has been presented by any member of the tribunal, and I can, therefore, only conjecture the motives which have led to its acceptance.

It is admitted by everybody as absolutely clear and indisputable that on the occasion of his naming Portland canal, Vancouver, in his exploration of that channel, traversed it from its head inland to its entrance into the ocean in latitude  $54^{\circ} 45'$ , that, in so doing, he sailed down Portland channel, along the passage north of Pearse and Wales islands, and straight onward to the sea through the passage north of Sitklan and Kannaghunut islands. Every one knows and admits that Vancouver never traversed the passage between Sitklan island and Wales island, through which this boundary line is now made to run. No more can it be pretended that this passage (which is now called Tongass passage) was ever named by Vancouver, was ever treated by him, or by any mapmaker at any time, as in any way belonging to Portland canal, or was ever thought of by those who negotiated the treaty of 1825 as being any part of that channel.

The Lord Chief Justice finds as a fact, which the maps and documents establish, that *one* entrance of Portland channel was between the islands now known as Kannaghunut and Tongass. I concur entirely in this finding, but must add that this entrance to the channel is the only entrance to it ever known, or in any way treated as part of the channel.

There is simply not the slightest evidence anywhere, that I am able to find, that either Vancouver or any subsequent explorer or mapmaker ever considered, or so much as spoke of, Portland channel as having *two* entrances to the ocean, or as including the passage through which this boundary line is now made to run.

But even if there were two or more such entrances, Vancouver's narrative and maps absolutely fix the one he explored and named by giving its exact latitude to the minute— $54^{\circ} 45'$ . And the President finds, as a fact, that *this* mouth, or entrance, is the one 'described in the treaty and understood by the negotiators.'

By what right, then, can this tribunal, sitting judicially, and sworn to so determine and answer the questions submitted, reject the channel so 'described in the treaty and understood by the negotiators,' and seek for a totally different channel, which, until now, no one ever thought of as any part of the Portland channel mentioned in the treaty?

I point to the additional circumstances so forcibly stated by my Lord. The whole negotiations were as to the 'point on *the coast*' to which Russia's southern boundary should be carried. The treaty fixes as that point the promontory of the mainland immediately to the north of Kannaghunut and Sitklan islands, the latitude of which is  $54^{\circ} 45'$ . The next point of mainland coast to the southward is Point Maskelyne, and it, of course, is undisputably British territory. The islands which lie between were never asked for by Russia. As the President's memorandum says, they were never so much as *mentioned* in the whole course of the negotiations. They lie wholly to the southward of  $54^{\circ} 45'$ , wholly to the southward of that entrance to Portland channel which alone is 'described in the treaty,' or was 'understood by the negotiators,' that is to say, wholly to the southward of the true boundary, and yet the majority of this tribunal is prepared to take two of those islands from Canada and transfer them to the United States.



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How can such a determination be reconciled with our duty to decide judicially upon the question submitted to us?

It is no decision upon judicial principles; it is a mere compromise dividing the field between the two contestants.

The formal answer which the President's memorandum makes to the question submitted is alone sufficient to condemn the boundary the tribunal is making. Question: 'What channel is the Portland channel?' Answer: 'The channel which runs to the north of . . . the islands of Sitklan and Kannaghunut, and issues into the Pacific between Wales island and Sitklan island.'

This language simply disregards entirely the relative position of the islands in question. Wales island lies due east of Sitklan. But the channel which runs to the north of Sitklan and Kannaghunut joins the ocean there, and, therefore, of necessity issues into the Pacific at that place, and it is the undoubted mouth of Portland channel. The treaty makes Portland channel the boundary, and if, as this answer formally states, Portland channel is that channel which runs to the north of these two islands, such two islands are necessarily British soil.

The whole truth of the matter is simply this: that, as to Portland channel, the case of Great Britain before us has been demonstrated to be unanswerable. By unanimous vote of this tribunal it has been so declared. It was, therefore, impossible to avoid awarding to Great Britain the islands called Pearse and Wales. It is equally impossible upon any intelligible principle for a tribunal, acting judicially, to hold that Portland channel, immediately on passing Wales island, makes a turn at right angles to itself, and runs between the islands of Wales and Sitklan. The sole question presented to us for decision on this branch of the case was whether the Portland channel of the treaty lay north of the four islands or south of the four, and until to-day it has been uniformly admitted by everybody that all four of these islands belonged altogether, either to Great Britain or to the United States. Instead of so finding, the majority of the tribunal have chosen to compromise with the plain facts of the case, and, while awarding Pearse and Wales islands to Great Britain, have determined to make those islands valueless to Great Britain or to Canada by giving to the United States the islands called Sitklan and Kannaghunut. The latter islands are of the utmost consequence, for they lie directly opposite to, and command the entrance to, the very important harbour of Port Simpson, British Columbia.

Upon such findings of fact as those above described, and after a solemn adjudication that the Portland channel of the treaty lies to the north of Pearse and Wales islands, the taking of two important islands, Sitklan and Kannaghunut, from Canada, and giving them to the United States by a proceeding said to be judicial is 'according to my true judgment,' nothing less than a grotesque travesty of justice.

In considering Questions 5, 6 and 7, the practical inquiry before us is where, upon the ground, the line of boundary described in the treaty ought to be laid down. That line, from the 56th parallel to the 141st meridian, is to follow 'la crête des montagnes situées parallèlement à la côte.' Our duty is, therefore, to find what mountains these are which the high contracting powers intended to describe by the words just quoted.

To do so we must first determine the meaning of the words 'la côte,' by reference to which the particular mountains meant by the treaty are to be identified.

It may be that the word 'coast' is generally used as meaning the edge of the land next the sea, or the line where the water and the land meet, though the double word 'coast-line' would more accurately express that idea, but the word 'coast' has another well-recognized signification. It frequently means the frontier of a country or territories near the sea.

'Herod . . . slew all the children that were in Bethlehem and in all the coasts thereof.'—Matthew ii, 16.

'The Jews . . . raised persecution against Paul and Barnabas, and expelled them out of their coasts.'—Acts xiii, 50.

Exactly the same usage obtains in French in regard to the words 'la côte.'



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In the treaty of 1825 the word is used sometimes in the one sense, sometimes in the other, as the context will readily demonstrate.

The preamble speaks of the possessions of the two powers 'on the north-west coast of America.'

Article I. secures to the subjects of both powers the right to land for purposes of trade at any occupied places 'on the coasts.'

Article II. prohibits landing without permission at any establishment 'on the north-west coast.'

Article III. defines a line of boundary between the possessions of the powers 'upon the coast of the continent.'

Articles IV and VI each speak of '*la lisière de côte*' which is to belong to Russia.

In all these cases the word is used in its territorial signification.

But in Articles III. and IV. the word is used as well in another sense. By Article III. the boundary line, on leaving the 56th parallel, is to follow the top of the mountains '*situées parallèlement à la côte.*' By Article IV, if these mountains should anywhere turn out to be more than 10 leagues 'from the ocean,' the line is there to run parallel to the '*sinuosités de la côte,*' but so as never to be more than 10 leagues away from it.

It is perfectly plain that '*la côte*' here does not mean territorial possessions. The word is undoubtedly used in the same treaty and in the same article of the treaty in different senses.

With what signification then is the word used in the instances just quoted?

Plainly, in Article IV. the meaning is synonymous with the edge 'of the ocean.' The 10 leagues spoken of are to be measured 'from the ocean' or 'from the coast.' The result of the measurement must be the same in either case—therefore, water which is not the ocean cannot have a 'coast-line' from which the measurement of the 10 leagues could be made.

This consideration alone seems to me to demonstrate that the head of such an inlet as the Lynn canal forms no part of the coast-line within the contemplation of this treaty. It would seem to me ridiculous to speak of a ship as making an ocean voyage while sailing along Lynn canal. It may be answered that the waters of Stephen's Passage, or at the mouth of the Stikine, are not ocean either, and I agree that such waters are, by reason of the outlying islands opposite, territorial waters, and not the open ocean, but in this treaty the powers were, with reference to the *lisière*, dealing with mainland coast alone, and, in that regard, speaking and contracting exactly as though no islands existed, and as though the shore of the mainland were washed by the open sea.

Lynn canal, from Point Couverden to Skagway, is some 90 miles in length, and of a width varying from 2 or 3 to 7 or 8 miles. It is occupied at its mouth by islands which divide the entrance into three channels, of which the widest is not more than three nautical miles across, and each of the other two less than half that size. It is simply a land-locked lake of salt water, literally one of '*les mers intérieures*' mentioned in Article VII. of the treaty.

If it were a question of determining the coast line of Lynn canal itself, such line would undoubtedly cross these islands at the entrance, just as the coast line of Lake Ontario would cross from island to island where the waters of the lake, flowing through the Thousand Islands, become the River St. Lawrence.

Such line, crossing at its narrowest part the entrance of Lynn canal from shore to shore, passing over the islands which lie in such entrance and the three intervening channels of water, is literally the dividing line between Lynn canal on the one side of it and the ocean on the other. Such line, in my opinion, is part of the line of 'coast' mentioned in Article IV., and the descriptive portion of Article III., of the treaty.

The whole negotiations leading to the treaty of 1825 grew out of the Russian Ukase of 1821, prohibiting foreign vessels from approaching the coast of North-west America, within 100 miles. The language of the Ukase in which this prohibition is



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worded contrasts the coasts with the islands, and shows that the coast of the mainland was that from which the 100 miles were intended to be measured, and M. Poletica, writing to Count Nesselrode (November 3, 1823) so describes it, saying that this edict had extended the maritime jurisdiction of Russia to the distance of 100 miles '*des côtes de la terre ferme.*'

The mainland coast line within the meaning of this Ukase would, beyond doubt, cross Lynn canal at the entrance, and Russia would have laughed at a foreign navigator contending that his ship off the entrance to Lynn canal, at say 30 miles distance, was not transgressing the Ukase, or that she was not within 100 miles of the coast, because she was more than 100 miles from the head of Lynn canal inland.

Ignoring the presence of the islands in front of the *lisière*, as we must do in considering what meaning the makers of this treaty attached to the words '*la côte*' when applying them to the mainland of the continent, it is too plain for argument to the contrary that the waters of Lynn canal are territorial or inland waters, as distinguished from the main sea or the high sea.

It is the open uninclosed waters of the ocean, and not waters within the *faucés terre* on the sea coast which constitute the high sea.

United States of America v. Grush (1829), 5 Mason 290.

Manchester v. Massachusetts (1890), 139 U.S., 139.

So, leaving the islands out of consideration, the mainland coast-line, from which, if the islands were absent, one would have to measure the 3-mile strip of territorial sea water over which the power owning the *lisière* would have jurisdiction would pass from headland to headland, following in a general way the windings of the natural shore, but never entering long and narrow inlets or departing substantially from the general trend of the coast.

That the plenipotentiaries who negotiated the treaty considered the coast as not ascending such an inlet as Lynn canal is abundantly evident from their language. They considered the head of Lynn canal as not ocean, but something very different. This is clearly shown by the language in which they speak of Portland channel, an inlet of practically identical character, though not extending so far inland.

In their observations on Sir Charles Bagot's amended proposal (February-March, 1824), the Russians speak of Portland Channel as having its '*origine dans les terres*' at the 56th parallel.

In writing Count Lieven, under date April 5 (17), 1824, Count Nesselrode says the Russians were willing to fix as their southern boundary Portland canal '*dont l'embouchure dans l'océan est à la hauteur de l'île du Prince de Galles et l'origine dans les terres entre les 55e et 56e degrés de latitude.*'

It certainly never could have been Count Nesselrode's idea that the head of Portland canal, 80 miles from its '*embouchure dans l'océan.*' was none the less ocean, and no more ought any one now to think he could persuade an impartial mind that the head of Lynn canal, still further inland, was the Pacific ocean.

Reference may well be made also to the language of the Russian '*contre-projet*' of August, 1824, by Article 1, of which it is proposed that the boundary line shall ascend Portland channel '*jusqu'au point où cette passe se termine dans l'intérieur de la terre ferme.*'

In the draft of the proposed treaty forwarded by Mr. George Canning to Mr. Stratford Canning on December 8, 1824, the boundary line was described as to ascend Portland channel till it strikes '*the coast*' of the continent in the 56th degree of north latitude. Translating this document into the French language, Mr. Stratford Canning submitted his final '*projet.*' in which it is proposed that the boundary line shall ascend Portland canal until it reaches '*la côte de terre ferme*' at the 56th parallel. M. Matusevitch, for the Russian Government, recognizing the impropriety of describing the head of such a channel as '*the coast.*' changed the phraseology into '*l'endroit où cette passe se termine dans l'intérieur de la terre ferme.*'



Surely, under such circumstances, Russia could never afterwards have pretended that the head of Portland channel, or of any similar inlet, was upon the coast or formed part of the coast.

It seems to me equally an utter misapprehension and perversion of language to term a long, narrow fiord such as Lynn canal a mere 'sinuosité de la côte,' parallel to the sides of which the treaty intended this boundary line to be drawn. The coast 'parallèlement' to which the mountains forming the boundary are situate is, in my opinion, clearly the general trend or direction of the mainland coast line, disregarding alike narrow inlets and narrow peninsulas—cutting off a headland, it may be, where physical features justify it, or crossing the mouth of an inlet as readily as though it were the mouth of a river. And it seems to me of much importance to note that this was the view adopted by the Superintendent of the United States' Coast and Geodetic Survey when issuing to his assistants instructions for their work of survey under the convention of July 22, 1892. It was upon this footing that the work of survey was done by the United States and British governments, and the object of such survey was to ascertain the facts and data necessary to the permanent delimitation of the boundary line. This work, done upon this principle by the parties now litigating, affords to us by their convention the information upon which the boundary line must now be established in accordance with the spirit and true intent of the treaty in regard to it.

From such general trend of mainland coast line the inner boundary of the *lisière* can never be *more than* 10 marine leagues distant; it may be much less if, nearer to the coast, mountains exist such as the treaty contemplates.

Such a coast line will follow literally the windings of the coast ('les sinuosités de la côte'), but will not depart from such coast to penetrate the interior 80 or 90 miles along a salt-water inlet any more than it would ascend for that distance a fresh-water river of possibly equal width.

If this is the true meaning of the words 'la côte' as used in the treaty in describing the boundary line, such boundary line must inevitably cross any inlet which is deeper than the maximum width of the *lisière* and leave the head waters of such inlet within British territory, and, in my judgment, the treaty itself furnishes conclusive inherent evidence that such result was exactly what the powers entering into it contemplated.

By Article VII. of the treaty the vessels of the two powers were for ten years to be reciprocally at liberty to frequent, for purposes of fishing and trading, all the inland seas, gulfs, havens, bays, 'sur la côte mentionnée dans l'Article III.'

What waters, then, were these, to frequent which the Russians were accepting from Great Britain a ten years' license?

If it can be shown that these waters were those of the *lisière*, or that the Russians so understood, it follows that they contemplated the boundary line at least possibly crossing inlets, and leaving the upper waters of such inlets within British territory.

The waters are those 'sur la côte mentionnée dans l'Article III.,' but Article III. speaks first of the possessions of the high contracting parties 'sur la côte du continent,' and afterwards of the boundary of the *lisière* on the mountains 'situées parallèlement à la côte.'

Is it, then, the coast of the continent or the coast of the *lisière* to which Article VII. refers?

Let the history of the article as traced from the negotiations give the answer.

Mr. George Canning first proposed it in his letter to Count Lieven of May 29, 1824, and in his draft convention forwarded from London on July 12 following.

As to the *lisière*, the proposal was (Article III., 2) that British subjects should *for ever* freely navigate and trade along its coast, nothing being offered to Russian subjects as to British waters *there*. But with regard to the other parts of the north-west coast of America, Article V. proposed that for years vessels of the respective powers and of their subjects should reciprocally enjoy the liberty of visiting for pur-



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poses of fishery and commerce the gulfs, havens and creeks in places not already occupied.

Article V. in this draft did not affect the *lisière* now in question, and made no mention of any right to either power to fish or trade in 'les mers intérieures' of the other's territory. Article V., as so presented to Russia, was merely an offer by Great Britain of a temporary license to fish and trade in British waters south of Portland channel upon Russia according to Great Britain similar license in respect of Russian waters west of Mount St. Elias. But the Russians were unwilling to concede to Great Britain the right to navigate and trade along the coast of the *lisière* for ever, and with regard to the other parts of the continental coast, having never asked from Great Britain any privileges of fishing or trading south of Portland channel, they absolutely refused to grant to her similar privileges north of the 60th parallel, or, which is to say, west of Mount St. Elias.

In his letter to Count Lieven of Aug 31 (September 4), 1824 (App., Br. case at p. 98, last paragraph, and p. 99, first paragraph). Count Nesselrode is emphatic and indignant in his declaration that except as to the *lisière*, no concession whatever in regard to either fishing, hunting, or trading would be made to Great Britain. Adhering firmly to this determination, as the Russians did, refusing inflexibly to grant to Great Britain any fishing or trading privileges west of Mount St. Elias, with what grace could Russia have demanded what she had never before asked, viz., exactly such privileges in the British territories south of Portland canal?

Nor was any suggestion made. On the contrary, in the same letter Count Nesselrode was very careful to point out (App., Br. case, p. 99, last paragraph), that Russia was leaving free to the trade of future establishments which English companies might form on the north-west coast 'tout le territoire situé au midi du Portland Channel.'

After consideration of Count Nesselrode's despatch, Mr. George Canning, on December 8, 1824, instructed Mr. Stratford Canning to conclude the treaty, accepting in above respects the objections of Russia, and saying—

'We are content also to assign the period of ten years for the reciprocal liberty of access and commerce with each other's territories.'

This was in its very terms that which alone Russia had signified she would agree to, viz., reciprocity in access and commerce limited in time to ten years, and limited in extent to the waters between Mount St. Elias and Portland canal. Between these points Britain could not possibly have any waters to give except the heads of inlets.

In the draft convention which accompanied these instructions to Mr. Stratford Canning, the article which is now No. VII of the treaty was amended by inserting therein the words 'the inland sea' before the words 'gulfs, havens, and creeks,' which alone had appeared in the corresponding article of the draft convention sent by the same Minister to Sir Charles Bagot five months before.

There is no body of water between Mount St. Elias and Portland channel of which these words are so apt a description as they are of Lynn canal.

In his 'projet,' submitted to the Russian plenipotentiaries, Mr. Stratford Canning changed the words 'the inland sea' to 'toutes les mers intérieures,' as they stand in Article VII of the treaty as signed.

In Mr. Stratford Canning's 'projet,' as amended by the Russians in the handwriting of M. Matusevich, it is absolutely clear that the Russians understood the ten years' license of fishing and trading they were giving to the British, and reciprocally receiving from the British, related to the waters of the *lisière*, and to no other waters whatever. The wording of the Article is 'toutes les mers intérieures, les golpes, havres, et criques dans les parties de la côte mentionnés dans l'Article III.' while in Article III. the only coast mentioned, and the only parts of the coast included, are the 'coast' and the parts of it between latitude 54° 40' and longitude 141.

In the treaty, as finally signed, the words 'dans les parties de la côte' become simply 'sur la côte,' and the possessions of the powers are, in Article III., described



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as 'on the coast of the continent' instead of as 'on the continent,' but the true meaning and intention of the parties has been in no way altered thereby, and from the time of Count Nesselrode's refusal to treat as to reciprocal trading rights elsewhere than in the *lisière*, and Mr. Canning's acquiescence in such refusal, no further negotiations whatever on that subject took place.

I am, therefore, of the clear opinion that Russia, by the treaty in question, intended and understood that the boundary line might cross inlets which would penetrate and divide the *lisière* exactly as a river would, and that, in that event, the heads of such inlets would lie within British territory, exactly as the upper reaches of a river would where that river flowed across the *lisière*.

With reference to the seventh question, as the majority of the tribunal has decided that the mountains which shall form the eastern boundary of the *lisière* are to be sought inland at some place behind the head waters of every inlet, it is idle for me to express my views at any length.

Over and over again in the negotiations this '*lisière de côte*' which Russia was asking and England giving was spoken of by the Russians as a mere 'point d'appui,' as extending inland only '*une très petite distance*,' as being only '*une étroite lisière sur la côte même*,' or '*une simple lisière du continent*.'

Consistently with this understanding of the width of the *lisière*, the mountains which were to form the inner boundary are always spoken of as being very near to the sea. The only knowledge of these mountains the negotiators of the treaty had was derived from Vancouver's travels, and Vancouver had seen the mountains only from his ships as these explored the coast.

The mountains nearest the sea for the whole length of the *lisière* are, in fact, lofty peaks, 3,000 feet or more in height, often rising to double or treble that elevation, and sometimes exceeding 15,000 feet. It is manifest that from the water, and close to shore, as Vancouver's course lay, mountains such as these would completely shut out any view of the country further inland. Except for possibly an occasional glimpse between seaward peaks of another mountain further away, Vancouver could have no knowledge what the nature of the country was behind the mountains he saw, and the language used by those who negotiated the treaty of 1825 shows that the extent of their knowledge was in this regard equally limited.

Under such circumstances, it is difficult for me to understand how the treaty, when it speaks of '*montagnes situées parallèlement à la côte*,' can refer to mountains miles inland, invisible from the sea, which lie far behind the seaward mountains, and which it is an admitted impossibility that Vancouver ever saw or the negotiators of the treaty ever knew the existence of.

The words of the treaty, '*montagnes situées parallèlement à la côte*,' and the idea of parallelism thereby conveyed, imply the line of mountains next adjacent to the coast. Apart from the circumstance that no kind of reason can be assigned for skipping over one or two, or it may be half a dozen, lines of mountains between the coast and the boundary, the very fact that the treaty couples the boundary line directly with the coast line argues in favour of the first line of mountains being meant. I think any one who spoke of two lines as parallel one to the other would scarcely have in contemplation a third line parallel to each, but situate between the two.

In the present case we have, moreover, the circumstance that throughout the negotiations preceding the treaty, these mountains are invariably spoken of as near to the coast.

In February, 1824, the first proposal of Russia as to the line (p. 70, Br. Case, App.) was that it should follow Portland canal '*jusqu'aux montagnes qui bordent la côte*.'

Repeating this proposal in their observations on Sir Charles Bagot's amended proposal, the Russians say they would make the limit of the *lisière* to the east the chain of mountains '*qui suit à une très petite distance les sinuosités de la côte*.'



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In narrating to Count Lieven, the course of these negotiations, Count Nesselrode, in his letter of the 5th (17th) April, 1824, says they were willing their eastern frontier should run along the mountains '*qui suivent les sinuosités de la côte.*'

On Sir Charles Bagot's despatches reaching England, the Hudson's Bay Company suggested that the boundary ought to be fixed at the 'nearest chain of mountains not exceeding a few leagues off the coast.'

Thereupon, Mr. George Canning sent to Sir Charles Bagot a draft convention, with instructions to conclude the negotiations. In these instructions (July 12, 1824), Mr. Canning directs that the line of boundary be drawn along the 'base of the mountains nearest the sea.'

This draft convention prepared by Mr. Canning shows very clearly his understanding of the trifling width the *lisière* would have, as it contains a provision (not carried into the final treaty, as the Russians objected) that the British should for ever have the right to trade '*sur la dite lisière de côte, et sur celle des isles qui l'avoisinent.*'

Mr. Canning's proposal that the boundary should be drawn along the base line of the mountains was objected to by Count Lieven for the reason, among others, that, considering the little certainty there then was in the geographical knowledge anybody had of the regions they were negotiating about, it would not be impossible that the mountains they were fixing as a boundary '*s'étendissent par une pente insensible jusqu'aux bords même de la côte.*'

This language makes it absolutely certain that the Russians understood their boundary to be the mountains nearest the sea.

On their proposing to take the top instead of the base of these mountains as the line of boundary, Mr. Canning assented, and the existing treaty resulted. It is not pretended that any change in the particular mountains intended was ever made or suggested. Whatever mountains those were, the base of which the British proposed as the boundary, those were the mountains the tops of which, by the concluded treaty, are the true boundary to-day, and it is to my mind clear to a demonstration that these were the mountains nearest the sea.

Three days after the treaty was signed, Count Nesselrode, in advising Count Lieven of the fact, says it would have been more just if, without any occasion possibly arising for application of the 10-league limitation, the boundary line had all along its length followed the natural frontier formed by '*les montagnes qui bordent la côte.*'

Ten days later, in writing again to Count Lieven on the subject, he directs him to make this observation to Mr. Canning, then describing the boundary Russia would have preferred to have taken throughout as '*la crête des montagnes qui suivent les sinuosités de la côte.*'

I am therefore of opinion that, upon the true interpretation of this treaty, the mountains which constitute the boundary are those which skirt the coast, the more prominent peaks among which have been pointed out in the British case and in the argument of counsel before us.

Finally, I have merely to say this further, that the course the majority of this tribunal has decided to take in regard to the islands at the entrance of Portland channel is, in my humble judgment, so opposed to the plain requirements of justice, and so absolutely irreconcilable with any disposition of that branch of this case upon principles of a judicial character, that I respectfully decline to affix my signature to their award.

(Signed) A. B. AYLESWORTH.

LONDON, October 17, 1903.



## OPINION OF SIR LOUIS JETTE.

By a majority of four the Alaska Boundary Tribunal has come to a decision on the questions upon which it had to pass judgment in accordance with the provisions of the treaty signed between Great Britain and the United States on January 24, 1903.

My honourable colleague, Mr. Aylesworth, and myself, have been unable to concur in most of the findings of the majority, and, although the treaty does not call for any expressions of opinion by those who differ, I feel it my duty to place on record, as briefly as I can, a few of the reasons by which I have been guided in arriving at conclusions different from those adopted by the other members of the commission.

I have no intention of writing exhaustively on the different questions submitted to the tribunal, as it would be more than useless at this moment. I will, therefore, refrain from any comment which could only be a repetition of the able argument advanced by the distinguished counsel in the case, and I will confine myself to a short and concise statement of the views which I firmly believe should have been accepted by the tribunal.

The first article of the treaty of 1903 gives the following directions to the members of the commission:—

‘The tribunal shall consist of six impartial jurists of repute, who shall consider judicially the questions submitted to them, each of whom shall first subscribe an oath that he will impartially consider the arguments and evidence presented to the tribunal, and will decide thereupon according to his true judgment.’

Thus, the character of the functions which had been confided to us is clearly defined. We have not been intrusted with the power of making a new treaty, and it was not in our province to make concessions for the sake of an agreement; we had simply to give a judicial interpretation of the articles of that treaty which were submitted to us. And this position, as I take it, was rendered still more clear by the fact that, if a majority could not be found to agree, no harm was done, the way being then still left open for the governments of both countries to do what would, unquestionably, be in their power, that is, to settle the difficulty by mutual concessions if they found it advantageous to each other.

Finding thus, that the line of demarcation between our duties and our powers had been very clearly defined, I took it to be my first duty, in passing on the different questions submitted to us, not to assume any more power than had been given to me by this first article of the convention of 1903.

Article III. of this treaty of 1903 then provides:—

‘It is agreed by the high contracting parties that the tribunal shall consider, in the settlement of the question submitted to its decision, the treaties respectively concluded between His Britannic Majesty and the Emperor of all the Russias, under date of February 28 (March 16), A.D. 1825, and between the United States of America and the Emperor of all the Russias, concluded under date of March 30 (April 18), A.D. 1867, and particularly the Articles III., IV., and V. of the first mentioned treaty, which in the original text are word for word as follows:—

‘III. La ligne de démarcation entre les possessions des Hautes Parties Contractantes sur la côte du continent et les îles de l’Amérique Nord-ouest, sera tracée ainsi qu’il suit:—

‘A partir du point le plus méridional de l’île dite Prince of Wales, lequel point se trouve sous le parallèle du 54° 40’ de latitude nord, et entre le 131° et le 133° degré de longitude ouest (méridien de Greenwich) la dite ligne remontera au nord de la passe dite Portland channel, jusqu’au point de la terre ferme où elle atteint le 56° degré de latitude nord; de ce dernier point la ligne de démarcation suivra la crête des montagnes situées parallèlement à la côte, jusqu’au point d’intersection du 141° degré de longitude ouest (même méridien); et, finalement, du dit point d’intersection, la



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même ligne méridienne du 141<sup>e</sup> degré formera, dans son prolongement jusqu'à la Mer Glaciale, la limite entre les possessions Russes et Britanniques sur le continent de l'Amérique Nord-ouest.

“IV. Il est entendu, par rapport à la ligne de démarcation déterminée dans l'Article précédent—

‘1. Que l'île dite Prince of Wales appartiendra tout entière à la Russie.

‘2. Que partout où la crête des montagnes qui s'étendent dans une direction parallèle à la côte depuis le 56<sup>e</sup> degré de latitude nord au point d'intersection du 141<sup>e</sup> degré de longitude ouest, se trouverait à la distance de plus de 10 lieues marines de l'océan, la limite entre les possessions Britanniques et la lisière de côte mentionnée ci-dessus comme devant appartenir à la Russie sera formée par une ligne parallèle aux sinuosités de la côte, et qui ne pourra jamais en être éloignée que de 10 lieues marines.

‘V. Il est convenu, en outre, que nul établissement ne sera formé par une des deux Parties dans les limites que les deux Articles précédents assignent aux possessions de l'autre. En conséquence, les sujets Britanniques ne formeront aucun établissement soit sur la côte, soit sur la lisière de terre ferme comprise dans les limites des possessions Russes, telles qu'elles sont désignées dans les deux Articles précédents; et, de même, nul établissement ne sera formé par des sujets Russes au delà des dites limites.’

The treaty then further provides:—

‘The tribunal shall also take into consideration any action of the several governments of their respective representatives, preliminary or subsequent to the conclusion of said treaties, so far as the same tends to show the original and effective understanding of the parties in respect to the limits of their several territorial jurisdictions under and by virtue of the provisions of said treaties.

## ARTICLE IV.

‘Referring to Articles III, IV and V. of the said treaty of 1825, the said tribunal shall answer and decide the following questions:—

‘1. What is intended as the point of commencement of the line?

‘2. What channel is the Portland channel?

‘3. What course should the line take from the point of commencement to the entrance to Portland channel?

‘4. To what point on the 56th parallel is the line to be drawn from the head of the Portland channel, and what course should it follow between these points?

‘5. In extending the line of demarcation northward from said point on the parallel on the 56th degree of north latitude, following the crest of the mountains situated parallel to the coast until its intersection with the 141st degree of longitude west of Greenwich, subject to the condition that if such line should anywhere exceed the distance of 10 marine leagues from the ocean, then the boundary between the Russian and the British territory should be formed by a line parallel to the sinuosités of the coast and distant therefrom not more than 10 marine leagues, was it the intention and meaning of said convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe or strip of coast on the mainland, not exceeding 10 marine leagues in width, separating the British possessions from the bays, ports, inlets, havens and waters of the ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich?

‘6. If the foregoing question should be answered in the negative, and in the event of the summit of such mountains proving to be in places more than 10 marine leagues from the coast, should the width of the *lisière* which was to belong to Russia be measured (1) from the mainland coast of the ocean, strictly so-called, along a line perpendicular thereto, or (2) was it the intention and meaning of the said convention



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that where the mainland coast is indented by deep inlets forming part of the territorial waters of Russia, the width of the *lisière* was to be measured (a) from the line of the general direction of the mainland coast, or (b) from the line separating the waters of the ocean from the territorial waters of Russia, or (c) from the heads of the aforesaid inlets?

‘7. What, if any exist, are the mountains referred to as situated parallel to the coast, which mountains, when within 10 marine leagues from the coast, are declared to form the eastern boundary?’

The treaty then provides for the meetings of the tribunal and the rendering of the award in the following terms:—

#### ‘ARTICLE V.

‘The tribunal shall assemble, for their first meeting, at London as soon as practicable after receiving their commissions, and shall themselves fix the times and places of all subsequent meetings.

‘The decision of the tribunal shall be made as soon as possible after the conclusion of the arguments in the case, and within three months thereafter. . . . The decision shall be made in writing, and dated, and shall be signed by the members of the tribunal assenting to the same. It shall be signed in duplicate, one copy whereof shall be given to the agent of the United States of America for his government, and the other to the agent of His Britannic Majesty for his government.

#### ‘ARTICLE VI.

‘Should there be, unfortunately, a failure by a majority of the tribunal to agree upon any of the points submitted for their decision, it shall be their duty to so report in writing to the respective governments through their respective agents. Should there be an agreement by a majority upon a part of the questions submitted, it shall be their duty to sign and report their decision upon the points of such agreement in the manner hereinbefore prescribed.’

As I have already said, these two last articles do not provide for any expression of opinion by those members of the tribunal who have the misfortune to find themselves in the minority.

The questions to be answered by the tribunal are seven in number. I will now take them in the order of the treaty:—

#### *First Question.*

‘What is intended as the point of commencement of the line?’

The answer to this question is as follows:—

‘The tribunal unanimously agrees that the point of commencement of the line is Cape Muzon.’

The representatives of both governments having agreed to accept Cape Muzon as the southernmost point of Prince of Wales island, and to take it as the point of commencement of the line, nothing further need be said on this first question.

#### *Second Question.*

‘What channel is the Portland channel?’

The following is the answer of the commission to this question:—

‘The tribunal unanimously agrees that the Portland channel is the channel which runs from about 55° 56′ north latitude, and passes to the north of Pearce and Wales islands.



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'A majority of the tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge and Mr. Turner, decides that the Portland channel after passing to the north of Wales island is the channel between Wales island and Sitklan island called Tongass channel.

'The Portland channel above mentioned is marked throughout its length by a dotted red line from the point marked B to the point marked C on the map, signed in duplicate by the members of the tribunal at the time of signing their decision.'

The contention of the United States on this point was that Portland channel is that body of water which goes seaward between Pearse island and the peninsula, passes Ramsden point in (or at the entrance of) Observatory inlet, and reaches the ocean by the channel between Pearse and Wales islands on the west and the easterly continental shore, entering the ocean between Point Wales on the west and Point Maskelyne on the east.

The contention of Great Britain was, that it is the channel which enters the ocean between Tongass island and Kannaghunut island, leaving Sitklan, Wales and Pearse islands on the south and east, and extending northerly 82 miles to its head.

The difference between the two contentions will be rendered more striking by saying that the British Portland Channel would run straight from its head to the ocean, whilst the American Portland Channel would divide in two passages at the head of Pearse island, and there leaving its northern branch would make a curve, and, entering Observatory inlet, would run down to the sea through that inlet, at the south of Pearse and Wales islands.

The contention of Great Britain is, to my mind, clearly supported by Vancouver's narrative of his voyage of 1794, when, after relating his movements in these waters, day by day, and specially from July 27 to August 2, he says:—

'In the morning of the 2nd (August) we set out early, and passed through a labyrinth of small islets and rocks, along the continental shore; this, taking now a winding course to the south-west and west, showed the south-eastern side of the canal to be much broken, through which was a passage leading S.S.E. towards the ocean. We passed this in the hope of finding a more northern and westerly communication, in which we were not disappointed, as the channel we were then pursuing was soon found to communicate also with the sea, making the land to the south of us one or more islands. From the north-west point of this land, situated in latitude of  $54^{\circ} 45\frac{1}{2}'$ , longitude  $229^{\circ} 28'$ , the Pacific was evidently seen between N.  $88^{\circ}$  W. and S.  $81^{\circ}$  W.'

Adding finally (under date August 15):—

'In the forenoon we reached that arm of the sea whose examination had occupied our time from the 27th of the preceding to the 2nd of this month. The distance from its entrance to its source is about 70 miles, which, in honour of the noble family of Bentinck, I named PORTLAND CANAL.'

When this second question was put to the commissioners, at the time of rendering the award, every one of them, as will appear by the official report, answered that Portland channel was the channel that passed—contrary to the American contention—to the north of Pearse and Wales islands.

But on a sub-question being put, the majority of the commissioners decided that after passing north of Pearse and Wales islands, it should pass south of Sitklan and Kannaghunut islands, which lie directly to the westward of Pearse and Wales islands, should make a curve there, and, abandoning its northern course, should reach the sea through Tongass passage instead of following the continuous straight line which, a moment before, had been found to be the proper one.

I voted against this sub-proposition, because I found that it was totally unsupported either by argument or authority, and was, moreover, illogical. The commission had, just a moment before, decided—and very properly, I believe—that Portland channel, as described by Vancouver, was that channel indicated on all the maps as running straight to the sea; it had refused to accept the contention of the United



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States to have it leave its northern course, and, making a curve at Pearse Island, to run through Observatory inlet, and all at once it is decided that this very channel shall make a curve lower down, that it will now leave its straight northern course and run into the sea through Tongass passage.

I can only say that if this decision is a correct and just one, I am very much afraid that the majority of the commission has committed an injustice towards the United States in refusing to admit its contention that the channel ought to make that curve a little higher up, at the head of Pearse island, which solution would appear, to any one having studied the map, a much more sensible and reasonable one than that which has been adopted.

The result of this last decision, on the sub-question above mentioned, is to deprive Canada of the two islands which lie at the very entrance of Portland Channel, Sitklan, and Kannaghunut islands. It will strike the eye of every one who looks at the map that the position of those two islands, at the entrance of the channel, is a most important one from a military point of view, and that the loss of them to Canada may be felt seriously in the future.

### *Third Question.*

‘What course should the line take from the point of commencement to the entrance to Portland Channel?’

The answer of the majority of the tribunal to this question is as follows:—

‘A majority of the tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner decide that the course of the line from the point of commencement to the entrance of Portland channel is the line marked A B in red on the aforesaid map.’

The line indicated in this answer is a direct line from Cape Muzon to the south entrance of Tongass passage.

This being in opposition to the language of the treaty, which is: ‘Commencing from the southernmost point of the island called Prince of Wales Island, . . . the said line shall ascend to the north along the channel called *Portland channel*,’ I feel bound to differ from the decision of the majority. *Tongass Passage*, as I have stated, on the previous question, is not *Portland Channel*, and the treaty says that the line shall be drawn along Portland Channel, but does not say that it can be drawn along Tongass Passage.

### *Fourth Question.*

‘To what point of the 56th parallel is the line to be drawn from the head of the Portland Channel, and what course should be followed between these points?’

This has been answered as follows:—

‘A majority of the tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner decides that the point to which the line is to be drawn from the head of Portland Channel is the point on the 56th parallel of latitude marked D on the aforesaid map, and the course which the line should follow is drawn from C to D on the aforesaid map.’

The decision on this point is not of great importance, as it affects only a few miles of territory. I must say, however, that it is not in accordance with the rule given by the treaty, which requires that, from this point, the 56th degree of north latitude, the line of demarcation shall follow the summit of the mountains situated parallel to the coast, . . . and that whenever the summit of such mountains . . . shall prove to be at a distance of more than 10 marine leagues from the ocean, the limit shall be formed by a line parallel to the windings of the coast, and which shall never exceed the distance of 10 marine leagues therefrom.’



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But, as I have just said, the territory affected by this decision is not of great importance, and the rule adopted by the majority on this point will, I may add be examined further on when dealing with Question 7.

*Fifth Question.*

'In extending the line of demarcation northward from said point on the parallel of the 56th degree of north latitude, following the coast of the mountains situated parallel to the coast, until its intersection with the 141st degree of longitude west of Greenwich, subject to the condition that if such line should anywhere exceed the distance of 10 marine leagues from the ocean, then the boundary between the British and the Russian territory should be formed by a line parallel to the sinuosities of the coast, and distance therefrom not more than 10 marine leagues, was it the intention and meaning of said convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe or strip of coast on the mainland, not exceeding 10 marine leagues in width, separating the British possessions from the bays, ports, inlets, havens, and waters of the ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich?'

The answer to this question, in the award rendered by the majority, is in the following terms:—

'A majority of the tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge and Mr. Turner, decides that the answer to the above question is in the affirmative.'

The contention of the United States on this point is therefore accepted as well founded. It follows from this decision that the strip of territory granted to Russia by the treaty runs around all the openings of the coast, specially Lynn canal, and thus deprives British possessions of any access to the sea on the whole length of the said *lisière*.

This treaty of 1825 was signed between England and Russia after very protracted negotiations, which took place during a period extending from November, 1821, to February, 1825. At the end of a considerable amount of communication and diplomatic correspondence the parties had come to an understanding, and agreed on the terms of a convention apparently satisfactory to both, and which seemed to contain, if not what each would have liked to have obtained, at least what they had mutually conceded to each other.

It will be useful here to recall briefly the circumstances which led the governments of Great Britain and Russia to sign this treaty, and to go back to the negotiations which preceded it, in order to have a fair understanding of its importance and bearing.

The Emperor of Russia, Paul the First, following the course adopted by all the governments of Europe from the beginning of the 17th century, had, in 1799, granted to an important company, called the Russian American Company, the monopoly of trade, hunting, and fishing on all the territory claimed by Russia on that part of North America (indicating as the limit the 55th degree of latitude), and also 'on the chain of islands extending from Kamschatka to the north, to America, and southward to Japan.'

Great Britain, whose possessions on the North American continent extended as far as those of Russia, had granted a similar monopoly to the Hudson's Bay Company, and in their adventurous explorations, advancing more and more every year in the unknown regions of this vast continent, the trappers of this company and of the Northwest Company had at last met with the agents of the Russian American Company.

Hence there soon arose the necessity of determining the limit of both empires' territory on this continent.

But another reason also necessitated the attention and action of the government of Great Britain in this instance.



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Emperor Alexander the First, wishing to grant additional favour to the Russian American Company, had published, in 1821, by a Ukase bearing date September 4, a regulation prohibiting all foreign vessels from approaching the coast of this part of the Russian territory within less than 100 Italian miles.

The two great maritime nations, Great Britain and the United States, could not acquiesce in a prohibition so completely antagonistic to the rules of international law and to the interests of commerce. Consequently, representations were made to the Russian government.

In the course of the negotiations which followed, the question of maritime supremacy over a distance of 100 Italian miles was soon settled, as stated in a despatch of Mr. George Canning to Sir Charles Bagot, bearing date January 15, 1824.

Mr. Canning clearly and concisely analyses the situation in the following terms:—

‘The questions at issue between Great Britain and Russia are short and simple.

‘The Russian ukase contains two objectionable pretensions: first, an extravagant assumption of marine supremacy; second, an unwarranted claim of territorial dominion.

‘As to the first, the disavowal of Russia is, in substance, all we could desire.’

The only thing remaining to be settled, therefore, was the question of the frontier.

Russian establishments at that date were more especially on the islands, and Count Nesselrode acknowledges that on the continent they had none below the 57th degree of latitude. These establishments were therefore the ones whose protection was specially desired and intended, and we will now see that it was in that spirit that the negotiations, which were to end in this treaty of 1825, were begun and continued.

In order to indicate the true character of these negotiations, a few quotations will be sufficient.

In a despatch dated November 3, 1823, and addressed to Count Nesselrode, M. de Poletica, giving the account of an interview he had had with Sir Charles Bagot, His Britannic Majesty’s ambassador to St. Petersburg, says:—

‘In the midst of this argument the British ambassador suddenly suspended the discussion in order to tell me that his government had, after all, no intention of discussing the territorial question according to the abstract principles of public law or of international law; that that would have the effect of rendering the discussion interminable; that the Cabinet of London expected a more satisfactory result, for the two parties interested, from an amicable arrangement which would be based only upon mutual consent, and that his instructions had been drawn up in that spirit.

‘I replied to Sir Charles Bagot that in the matter in question, so far as I could foresee the views of the Imperial Government, I believed that I could take upon myself boldly to assure him that they were in perfect agreement with those of the Cabinet of London.’

The position of both parties is therefore clearly defined by these very plain and very full declarations.

Let us see now what were the claims of Russia as to this strip of territory, which is the subject of the present difficulty.

As I have already said, Russian establishments at that time were more especially situated on the islands, and the Russian plenipotentiaries openly declare that it is for the protection of these establishments that they require this strip of territory on the coast of the mainland, coming so far down towards the south, when the principal line of separation between the possessions of the two empires on this continent was, however, to be placed much higher up.

So we find in the counter-proposition offered by Russia, in answer to a draft of convention submitted by Sir Charles Bagot in March, 1824, the following declaration:—

‘The principal motive which forces Russia to insist upon retaining the sovereignty over the strip of land described previously on the mainland from the Portland



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canal as far as the point of intersection of the 60th degree of latitude with the 139th degree of longitude is that, if deprived of this territory, the Russian American Company would be left without any means of supporting the establishments, which would thereby be left without any support, and could not have any strength nor solidity.'

A few days later (March 29, 1824), in the document containing the final answer to the British proposition, the Russian plenipotentiaries, affirming their previous claims, also say:—

'The Emperor instructs his plenipotentiaries to declare once again to the ambassador of England:

'That the possession of Prince of Wales island without a portion of territory *on the coast opposite this island* could not be of any use to Russia.

'That any establishment formed on the said island, or on those around it, would in some manner, be turned by the English establishments of the mainland, and be completely at the mercy of the latter.'

On April 5 following, Count Nesselrode, in a despatch to Count Lieven, Russian ambassador to London, says:—

'In order to avoid intersecting the Prince of Wales island, which, according to this arrangement, should belong to Russia, we proposed to carry the southern frontier of our domains to the 54th degree 40 minutes of latitude, and to make it strike on the continent the Portland canal, the mouth of which, on the ocean, lies at the height of Prince of Wales island, and the head inland between the 55th and 56th degree of latitude.

'This proposition only secured to us a narrow strip on the coast itself, and left to the English establishments all the space required for their increase and extension.'

And a little further on he adds:—

'As for us, we restrict our demands to a small strip (*lisière*) of coast on the continent, and in order to dispel all objections whatsoever, we guarantee the free navigation of the rivers, we proclaim the opening of the port of Novo-Archangelsk.'

One month later, Count Nesselrode, in another despatch to Count Lieven, again says:—

'If the principle of reciprocal convenience is advocated, Russia gives up for the progressive extension of the English establishments a vast extent of coast and of territory; she guarantees free markets; she makes provision for the interests of their trade, and, as a compensation for so many offers inspired by the sincerest spirit of conciliation, she reserves for herself only a point of support, without which it would not be possible for her to keep one-half of her dominions.'

It is unnecessary to multiply these quotations.

Let us see now how—after coming to such an understanding—the final convention was drafted.

A number of drafts and counter-drafts were exchanged between the representatives of the two governments, and it is interesting to note the successive changes made in the wording of those documents as to the strip of territory claimed by Russia.

In the draft of agreement sent by Mr. George Canning to Sir Charles Bagot on July 12, 1824, it is stated, in Article II., that the line 'shall be carried along the coast in a direction parallel to its windings, and at or within *the seaward base* of the mountains by which it is bounded.'

Mr. Canning, in his letter inclosing this draft, uses the following expressions: 'thence following the sinuosities of the coast, along the base of *the mountains nearest to the sea*.'

Article III. of this draft then mentioned a width -to be determined upon—which this strip of land could not exceed.



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This proposal was not accepted, and Count Nesselrode sent to Count Lieven a counter draft, the terms of which, with regard to the *lisière*, he himself analyzes in the following terms: 'Our counter draft carries our boundary from the 51st degree of north latitude to 54° 40'. It leaves the establishments which the English companies may form hereafter on the north-west coast all the territory situated to the south of Portland channel. It abolishes the establishment of the mountains as the boundary of the strip of mainland which Russia would possess on the American continent, and limits the width of this strip to 10 marine leagues, in accordance with the wishes of England.'

In a letter addressed to Mr. Stratford Canning, dated December 8, 1824, Mr. George Canning replied to Count Nesselrode's proposal as follows:—

'The Russian plenipotentiaries propose to withdraw entirely the limit of the *lisière* on the coast which they were themselves the first to propose, viz., the summit of the mountains which run parallel to the coast, and which appear, according to the map, to follow all its sinuosities, and to substitute generally that which we only suggested as a corrective of their first proposition.

'We cannot agree to this change.' It is quite obvious the boundary of mountains, where they exist, is the most natural and effectual boundary. The inconvenience against which we wished to guard was that which you know to have existed on the other side of the American continent, when mountains laid down in a map as in a certain given position, and assumed, in faith of the accuracy of the map, as a boundary between the possessions of England and the United States, turned out to be quite differently situated, a discovery which has given rise to the most perplexing discussions. Should the maps be no more accurate as to the western than as to the eastern mountains, we might be assigning to Russia immense tracts of inland territory, *where we only intended to give, and she only intended to ask, a strip of the sea coast.* . . . .

'Where the mountains are the boundary, we are content to take the *summit* instead of the seaward base as the line of demarcation.'

Article III. of the draft of treaty sent with this letter by Mr. George Canning to Mr. Stratford Canning, says: 'Provided, nevertheless, that if the summit of the aforesaid mountains shall turn out to be, in any part of their range, at more than the distance of 10 marine leagues *from the Pacifick*, then that, *for that space*, the line of demarcation shall be a line of parallel to the coast and its windings,' &c.

This draft having been submitted to Mr. Matusevich—an official of the Russian Office, and afterwards Ambassador Extraordinary—was slightly changed. Thus, in Article IV, instead of maintaining the expression 'the Pacifick,' he says: 'That wherever the distance between the crest of the mountains and the sea shall be more than 10 marine leagues, the boundary of this same strip shall be formed by a line parallel to the sinuosities of the coast, and which shall nowhere be more than 10 marine leagues *from the sea.*'

Was it M. Matusevich's intention, in substituting this word *sea*, to the word *Pacifick* which had been used by Mr. Canning, to weaken the force and bearing of the expression chosen by him? It is impossible to know; but one thing is certain, however, and it is that if such was his intention it was not realized, the treaty in its definite form using the word '*ocean*,' which, in this instance, is the equivalent of the expression used by Mr. Canning.

Thus the second paragraph of Article IV of the treaty of 1825 provides:—

'Que partout où la crête des montagnes qui s'étendent dans une direction parallèle à la côte, depuis le 56° degré de latitude nord au point d'intersection du 141° degré de longitude ouest, se trouverait à la distance de plus de 10 lieues marines de l'océan, la limite entre les possessions Britanniques et la lisière de côte mentionnée ci-dessus comme devant appartenir à la Russie, sera formée par une ligne parallèle aux sinuosités de la côte et qui ne pourra jamais en être éloignée que de 10 lieues marines.'



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It is a well known rule in the interpretation of contracts that one of the safest modes of arriving at the true intention of the parties is to take into consideration the circumstances which have led to the settlement, to study the claims which each party pressed upon the other, and to ascertain the end which it would have wished to secure.

Now, if I apply this rule to the treaty of 1825, it seems to me impossible to arrive at the conclusion that the intention of the parties to this treaty was that this strip of territory should be traced so as to run up to the source of all the rivers, and to the head of all the inlets, which passed through this strip to reach the sea.

This, however, is the meaning which a majority of the tribunal has given to this treaty when by an interpretation of the word *coast*, which appears to me to be forced and untenable under the circumstances, they are led to say that Lynn canal is the ocean, and that the coast of the ocean means equally the coast of Lynn canal !

I cannot accept this interpretation. My humble opinion, after having maturely considered the documents from which I have taken the quotations made above, is that those who prepared and drafted this treaty of 1825 never contemplated such a result. Consequently, leaving aside the learned distinctions which were pressed upon us as to the meaning of the word *coast*, to retain only what I believe was the intention of the parties, I still say that even if we were to consider Lynn canal as an arm of the sea, or even as an inland sea, the coast of Lynn canal could not, even then, be considered the coast of the ocean !

There is in my country one of the largest rivers in the world, and I have often heard it said by some of my compatriots, when contemplating with pride the immense sheet of water at its mouth. 'Why, but this is the sea !'

However, it has not yet entered the mind of any one to say: 'This is the ocean !'

It has been reserved for Lynn canal to be raised to that dignity !

*Sixth Question.*

'If the foregoing question should be answered in the negative, and in the event of the summit of such mountains proving to be in places more than 10 marine leagues from the coast, should the width of the *lisière* which was to belong to Russia be measured— (1) from the mainland coast of the ocean, strictly so-called, along a line perpendicular thereto, or (2) was it the intention and meaning of the said convention that where the mainland coast is indented by deep inlets forming part of the territorial waters of Russia, the width of the *lisière* was to be measured (a) from the line of the general direction of the mainland coast, or (b) from the line separating the waters of the ocean from the territorial waters of Russia, or (c) from the heads of the aforesaid inlets ?'

The majority of the tribunal declares that:—

'Question 5 having been answered in the affirmative, Question 6 requires no answer.'

The opinion of the members of the tribunal on this question, moreover, is made apparent from the views expressed on the other question, and it would be useless to add anything more.

*Seventh Question.*

'What, if any exist, are the mountains referred to as situated parallel to the coast, which mountains when within 10 marine leagues from the coast, are declared to form the eastern boundary ?'

Answer:—

'A majority of the tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner, decides that the mountains marked S on the aforesaid map, are the mountains referred to as situated parallel to the coast, where such mountains marked S are situated.'



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‘Between the point marked P (mountain marked S 8,000) on the north and the point marked T (mountain marked S 7,950), in the absence of further survey the evidence is not sufficient to enable the tribunal to say which are the mountains parallel to the coast within the meaning of the treaty.’

Article III of the treaty of 1825, after declaring that the line of demarcation shall ascend to the north along the channel called Portland channel, as far as the point of the continent where it strikes the 56th degree of north latitude, adds:—

‘From this last mentioned point the line of demarcation shall follow the summit of the mountains situated parallel to the coast as far as the point of intersection of the 141st degree of west longitude.’

Article IV, § 2, then provides:—

‘That whenever the summit of the mountains which extend in a direction parallel to the coast, from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude, shall prove to be at the distance of more than 10 marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia, as above mentioned, shall be formed by a line parallel to the windings of the coast, and which shall never exceed the distance of 10 marine leagues therefrom.’

The contention of the United States on this point is stated in the following words, on p. 206 of the case:—

‘The United States request the tribunal to answer and decide that such mountains (as mentioned in question 7) do not exist within 10 marine leagues from the coast.’

This, however, cannot be said to express correctly what was argued before the tribunal on this question. It would perhaps be safer to say that the real contention of the United States on this point was that in the intention of the negotiators of the treaty the line was to follow a chain of mountains, and that there being no such chain, the line was to be drawn at a uniform and regular distance of 35 miles from the coast.

It was also suggested, in the argument, that the word *crest* carries with it the indication of a continuous chain or range of mountains, and that this does not exist within the limit of the 10 leagues.

The British contention was that mountains answering the description of the treaty do exist.

The evidence on this point clearly establishes the contention of Great Britain.

Mr. King, chief astronomer of the Department of the Interior, at Ottawa, in his affidavit (p. 307, British Case Appendix), says:—

‘Throughout its entire length, from the 56th parallel to Lynn canal, the coast is bordered by mountains 3,000 to 5,000 feet in height, having rocky peaks and ridges. Their summits average 5 or 6 miles in distance from the sea, and in many places they approach even nearer. These mountains preserve for considerable distances much uniformity of height, and also of direction, forming elongated mountain masses lying with their lengths parallel to the general line of the coast. Penetrating inlets and valleys separate these mountain masses from one another, but without greatly disturbing their continuity of direction.’

And on p. 308:—

‘Hence a line following mountain summits parallel to the general line of the mainland is possible, subject only to the breaks caused by inlets and river valleys, which breaks are comparatively short compared with the lengths of the continuous lines of the mountain summits.’

The decision of the tribunal, on this point, is adverse to the contention of the United States; it acknowledges that the treaty does not call for a continuous chain of



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mountains, and that those mountains which exist along the coast, answer the requirements of the treaty for the tracing of the line-frontier.

I entirely concur in the foregoing part of the decision of the tribunal on this question, but I stop there, and cannot follow the majority in the adoption of its system for the demarcation of the line.

The treaty of 1825 clearly indicates, in my opinion, that the mountains which were to constitute the boundary line, were those *nearest to the coast*. In fact, when the treaty says: 'the summit of the mountains situate parallel to the coast,' it evidently points to the mountains on the coast, those which are situated on the border of the coast, and if we were to suppose two chains of mountains, one parallel to the other, the one which would lie the farthest from the coast would not be situated parallel to the coast, but it would be situated parallel to the other chain of mountains. Therefore, the first range of mountains, the one nearest to the coast, is the one which is alone indicated by the treaty. This, to me, seems unanswerable.

But a few quotations from the opinions of those who have negotiated this treaty, will render the point still more evident.

Mr. George Canning, in a despatch to Sir Charles Bagot, dated July 12, 1824, says:—

'His Majesty's government have resolved to authorize your Excellency to consent to include the south points of Prince of Wales island within the Russian frontiers, and to take as the line of demarcation a line drawn from the southernmost point of Prince of Wales island from south to north through Portland channel, till it strikes the mainland in latitude 56, thence following the sinuosities of the coast, along the base of the *mountains nearest the sea* to Mount Elias . . . . '

Count Lieven, in a memorandum which he prepared on the North-west coast convention (July 24, 1824), says:—

'In the case now under consideration, the word *base*, by the indefinite meaning which it presents, and the greater or less extension which can be given to it, would appear hardly suitable to secure the delimitation against subsequent disputes, for it would not be impossible, in view of the little exactness of the geographical ideas which we as yet possess as to these regions, *that the mountains designated as the boundary should extend, by an insensible slope, down to the very border of the coast.*'

In his despatch to Count Lieven, bearing date of February 20, 1825, Count Nesselrode again mentions 'the natural frontier formed by *the mountains bordering on the coast.*'

There is, therefore, no doubt in my mind that the mountains indicated by the treaty are those situated nearest to the coast.

Nevertheless, instead of following the evident meaning of the treaty, the majority of the tribunal has adopted a line which, at a number of points of its course, rests on mountains which lie far from the coast, and are separated from it by nearer ones, which ought consequently to have been chosen in their stead, as the points of demarcation of the line.

I found it impossible, under such circumstances, to concur in this arbitrary determination of a line which, although it does not concede all the territory they claimed to the United States, nevertheless deprives Canada of the greater part of that to which she was entitled.

(Signed) L. A. JETTE.

October 22, 1903.



## OPINION OF THE UNITED STATES' MEMBERS OF THE TRIBUNAL (1).

*Opinion on Second Question.*

Question number two of the convention, 'What is the Portland channel?' has presented such peculiar difficulties that the undersigned feel it necessary to set forth the reasons which have led them to join in the decision rendered by a majority of the tribunal.

An inlet of great depth, starting just below the 56th parallel, runs down to the head of Pearse island. At this point the inlet divides, and down to this point of division there is no question of identity, and none has ever been seriously raised. From the north-eastern corner of Pearse island to within five miles of the 56th parallel the identity of this inlet with the Portland channel, as intended by the negotiators of the treaty of 1825, is undisputed, but after the division at Pearse island the question has arisen whether the channel south of Pearse and Wales islands is the Portland channel, or whether that which passes to the north of those two islands is entitled to the name. Were we able to rest a decision solely on maps which we know to have been before the negotiators of the treaty of 1825, the weight of evidence in the opinion of the undersigned would be in favour of the view that the Portland channel passed south of Wales and Pearse islands, with Observatory inlet entering it on the other side, and so on to the sea. The northern channel as indicated on contemporary maps is narrow and indistinct, so that it is not easy to believe that any negotiators would have taken it as a clear, well-defined, natural boundary, such as they were seeking to establish in the treaty of delimitation. The testimony of maps subsequent to the treaty is fluctuating, but general opinion seems to have settled down to the belief that the more obvious southern channel was a continuation and part of the Portland channel, and on many of the later maps we find the channel passing south of Pearse and Wales islands denominated 'Portland inlet.' In determining, however, what should now be called Portland channel, the question to be decided was what the negotiators meant when they used that term, and in arriving at the intention of the negotiators of the treaty of 1825, it was not possible to reach it by an inspection of the maps alone. The negotiators undoubtedly intended when they named Portland channel as the southern boundary of the Russian possessions to refer to that inlet or body of water which Vancouver named Portland canal, for it was Vancouver who gave the name, as is well known, to this inlet. If Vancouver had left us nothing but maps, the case, although not free from doubt and obscurity, would be comparatively simple. But Vancouver also published, in addition to his maps, a detailed narrative of all his explorations upon the north-western coast of America.

It was argued very forcibly by the counsel for the United States that there was no proof that the negotiators had read Vancouver's narrative, but while it is no doubt true that they made no such examination of that narrative as has lately been pursued, it is almost impossible to suppose that men of trained ability seeking to establish a natural boundary in a little known region should not have read the only book which contained any detailed information as to that portion of the globe with which they were dealing. We know from undoubted evidence that Mr. Pelly, the representative of the Hudson Bay Company, who was consulted by Mr. Canning at every stage of the negotiations, had read Vancouver's narrative, or at least, those portions relating to the part of the coast which was under discussion. It is almost incredible, therefore, that Mr. Canning and Sir Charles Bagot should not also have examined the narrative, and it is equally unlikely that the Russians should have failed to consult the one book which contained a detailed examination of that region, and which had appeared in no less than four editions, two in English and two in French.

It has seemed, therefore, to the undersigned impossible to exclude the narrative in endeavouring to reach a conclusion as to what the negotiators meant by the Portland



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channel. In 1888 Mr. Dall, of the Smithsonian Institution, in a memorandum sent to Mr. Bayard, said (pp. 104 and 105, United States' counter case):—

'At this point we come across another difficulty, or rather, one has been suggested very recently. By a careful study of Vancouver's text it is evident that there is on this point a certain discrepancy between his charts and his texts. In reading over his whole account of the survey of this inlet and its branches (Vancouver, official English edition, vol. ii, pp. 329, 330, 331, 334-340 and 371), he seems to have varied a little in his notions, but his final treatment of Observatory Inlet extends it to Points Wales and Maskelyne, while in another place he seems to regard it as beginning at Point Ramsden (*cf.* *op. cit.* 2, p. 375). On the other hand, he treats Portland Inlet as continuing to the sea behind Wales and Pearse islands. So that, if the treaty is to be tried by Vancouver's text, it will result in giving to Great Britain the above mentioned islands and some other small ones.'

Mr. Dall there points out for the first time the discrepancy which appeared to exist between the maps and the text of the narrative, or, perhaps, to state more exactly, the discrepancy between the text and what appeared to be the obvious, though not necessarily the only, meaning of the maps. There is no need here to enter into all the details of Vancouver's narrative, but on page 379 of his narrative he says, under the date of Monday, August 19, 1793:—

'A want of wind and a flood tide prevented our weighing until nine the following morning, when with an ebb tide we again proceeded, but did not reach the entrance to Observatory Inlet until two in the morning of the 20th, a distance of not more than thirteen leagues from Salmon Cove. The western point of Observatory Inlet I distinguished by calling it Point Wales.'

That is, he called that stretch of water from Salmon Cove, on Observatory Inlet, where his ships had been anchored, to the south-western extremity of Wales island, a distance of 13 leagues, 'Observatory Inlet.' This includes, as a glance at the map will show, the channel which passes south of Pearse and Wales islands. If, therefore, he intended to name that whole stretch of water Observatory Inlet, it is exclusive, and the name of Portland canal cannot be applied to it. Portland canal, therefore, must either have stopped at the north-eastern extremity of Pearse island or must have continued by the channel north of that island to the eastern end of Wales island.

The question is a very close one, but if we admit the text of the narrative it seems difficult to avoid the conclusion that by 'Observatory Inlet' he included all the water from Salmon Cove to the south-western extremity of Wales island. We also know that he explored the northern channel, occupying himself in that work from July 27 to August 2. He followed the channel westerly, passing what has been known as Tongass Passage, between Wales and Sitklan islands, through which he looked and saw at a short distance the ocean. Desiring, however, to find, if possible, another opening to the ocean which followed the general line of the continent, he kept on through the narrow passage which passes north of Sitklan and Kannaghunut islands, and came out into the ocean opposite Cape Fox. Near Cape Fox he encamped. He then explored the waters around Revilla Gigedo island, and on August 14 returned to Cape Fox. At dawn the next morning, which in that latitude and in August must have been at a very early hour, he set out to return to his vessels, and he writes that in the forenoon, which must have been some hours after he started from the point opposite the narrow channel out of which he had issued August 2, he passed the mouth of the channel which he had previously explored, and which he named 'Portland's canal, in honour of the noble family of Bentinck.'

His exact language is as follows:—

'In the forenoon we reached that arm of the sea whose examination had occupied our time from the 27th of the preceding to the 2nd of this month. The distance from its entrance to its source is about 70 miles, which, in honour of the noble family of Bentinck, I named "Portland's canal"' (pp. 370-71, Vancouver).



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It seems clear from this statement that if he considered, as the other extracts from his narrative already cited seem to prove, the northerly channel as the natural extension of the deep inlet running to the 56th parallel, he must have looked into it through Tongass Passage, and then and there gave it its name. Moreover, it is quite obvious from the maps that there are three outlets for the waters which come through the northern channel and are swelled by those from the inlets about Fillmore island. Two of them are very small, so small as to be practically impossible to navigate. The third is the Tongass Passage, and that seems beyond a question, on the face of both maps and the text, to be the true entrance to the channel which passes north of Wales and Pearse islands. Accepting Vancouver's narrative as having the greatest weight, the conclusion follows that the award of the tribunal must be that the Portland channel intended by the makers of the treaty of 1825 was that body of water which entered the sea by the Tongass Passage and passed thence north of Wales and Pearse islands, and so onward to the immediate neighbourhood of the 56th parallel.

(Signed)

ELIHU ROOT.

HENRY CABOT LODGE.

GEORGE TURNER.

October 20, 1903.

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## OPINION OF THE UNITED STATES' MEMBERS OF THE TRIBUNAL (2).

### *Opinion on Fifth Question.*

The following statement presents in brief the chief considerations which have led the undersigned members of the Alaskan Boundary tribunal to the conclusion that the fifth question submitted under the treaty of January 24, 1903, should be answered in the affirmative.

The question calls for a construction of the treaty between Great Britain and Russia signed February 16 (28th) 1825, agreeing upon a boundary line between Alaska and British Columbia. The particular provisions which undertake to describe the boundary line are in these words:—

‘III. The line of demarcation between the possessions of the high contracting parties, upon the coast of the continent, and the islands of America to the north-west, shall be drawn in the manner following:—

‘Commencing from the southernmost point of the island called Prince of Wales island, which point lies in the parallel of 54° 40′ north latitude, and between the 131st and the 133rd degrees of west longitude (meridian of Greenwich), the said line shall ascend to the north along the channel called Portland channel, as far as the point of the continent where it strikes the 56th degree of north latitude; from this last mentioned point, the line of demarcation shall follow the summit of the mountains (‘la crête des montagnes’) situated parallel to the coast, as far as the point of intersection of the 141st degree of west longitude (of the same meridian); and, finally, from the said point of intersection, the said meridian line of the 141st degree, in its prolongation as far as the frozen ocean, shall form the limit between the Russian and British possessions on the continent of America to the north-west.

‘IV. With reference to the line of demarcation laid down in the preceding article, it is understood:

‘First. That the island called Prince of Wales island shall belong wholly to Russia.

‘Second. That whenever the summit of the mountains (‘la crête des montagnes’) which extend in a direction parallel to the coast, from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude, shall prove to be at the distance of more than 10 marine leagues from the ocean, the limit between the



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British possessions and the line of coast which is to belong to Russia, as above mentioned, shall be formed by a line parallel to the windings of the coast, and which shall never exceed the distance of 10 marine leagues therefrom.'

Portland channel begins on the full ocean, at a point very near latitude  $54^{\circ} 49'$  and ascends for about 70 miles, in a general direction slightly east of north, to a point which is, in fact, about 5 miles from the 56th parallel.

The Fourth Question relates to the course of the line through this intervening space.

The tribunal has agreed that as the intervening distance is not more than would naturally be covered in climbing from the sea level to the summit of the high mountains which were known in 1825 to exist, and which do in fact exist, at the head of the Portland channel, the simple and obvious way to give effect to the intent of the treaty is to take the shortest route from the water to the summit of the mountain, which is in plain sight from the water; and this course brings us to the 56th parallel, upon a mountain ridge over 5,000 feet in height, the foot of which is washed by the waters of the Portland channel.

The Fifth Question relates to the course of the line northward from that point. It is in the following words:—

'In extending the line of demarcation northward from said point on the parallel of the 56th degree of north latitude, following the crest of the mountains situated parallel to the coast until its intersection with the 141st degree of longitude west of Greenwich, subject to the condition that if such line should anywhere exceed the distance of 10 marine leagues from the ocean, then the boundary between the British and Russian territory should be formed by a line parallel to the sinuosities of the coast, and distant therefrom not more than 10 marine leagues, was it the intention and meaning of said convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe or strip of coast on the mainland, not exceeding 10 marine leagues in width, separating the British possessions from the bays, ports, inlets, havens and waters of the ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich?'

The main practical effect of the answer will be to determine whether the line was to run around the heads of the inlets, leaving them in Russian territory, or was to cut across the inlets, leaving their heads in British territory.

We are of the opinion that the true construction of the treaty is that which carries the line around the heads of the inlets, and that the following considerations all require the adoption of this construction:—

1. The purpose of the treaty, well understood by the negotiators, would be accomplished by this construction, and would be defeated by the other construction.

2. The natural and ordinary meaning of the terms used in the treaty, when applied to the natural features of the country known to the negotiators, or supposed by them to exist, requires this construction.

3. The meaning expressly given to the words used in the treaty by the negotiators, in their written communications during the course of the negotiations, requires this construction.

4. The official maps published by Russia, Great Britain, Canada, British Columbia and the United States—many in number—for a period of more than sixty years after the treaty, known to the public officers of the different governments, and accepted as the basis of official action, without a single exception carried the line around the heads of all the inlets, and were wholly irreconcilable with the other construction.

During all that period the cartographers of England, France, Germany, Russia, Spain, the United States and Canada were permitted to represent the line in the same way, without any question or suggestion to the contrary, so that it was permitted to



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become part of the common understanding of mankind that the region now in dispute was Russian and not British territory. And the United States were permitted to purchase the territory, forty-two years after the treaty, with this understanding.

These things show a practical interpretation of the treaty.

5. For more than sixty years after the treaty, Russia, and in succession to her the United States, occupied, possessed and governed the territory around the heads of the inlets without any protest or objection, while Great Britain never exercised the rights or performed the duties of sovereignty there, or attempted to do so, or suggested that she considered herself entitled to do so.

This was a practical interpretation of the treaty by all parties concerned.

The purpose of the treaty is not open to doubt and was, in substance, conceded upon the arguments before the tribunal.

Both Russia and Great Britain had chartered great fur-trading companies. On the one hand, the Russian-American Company had extended its establishments from the west up the chain of Aleutian islands, and down the north-west coast of America as far as the 57th parallel, where it had a post at New Archangel, or Sitka, on Baranof island. On the other hand, the Hudson's Bay Company, crossing the Rocky Mountains from the east, had pushed its posts west to the Mackenzie river and the upper waters of the Fraser river, to within about 100 miles of the coast at about latitude 55° or 56°. It was evident that before very long the agents of these two companies would meet and dispute the control of the same hunting grounds and of trade with the same native tribes.

By a ukase dated July 8, 1799, Russia had granted to the Russian-American Company the exclusive right to hunt and trade upon the coast as far south as the 55th parallel; and by a ukase dated September 4, 1821, Russia had undertaken to protect the Russian Company by prohibiting all foreign vessels not only to land on the coasts and islands which were declared to belong to Russia as far south as latitude 51 degrees, but also to approach the coast within less than 100 miles.

Great Britain protested against this assumption of exclusive jurisdiction over the Pacific Ocean, and incidentally to the settlement of that question, the two nations undertook to delimit their respective territorial possessions in that part of the world.

Russia based her claims upon occupation and trade by the Russian-American Company; Great Britain based her claims upon occupation and trade by the Hudson's Bay Company.

Both parties soon agreed to drop the discussion of strict right, and to make such a settlement as should be for their mutual convenience and interest. Proceeding upon this ground, the British negotiators proposed to confine Russia to the continent west of the Lynn canal, and the islands in the immediate neighbourhood of the post at Sitka. Russia, upon the other hand, insisted that it was necessary for the protection of her trade, of which the post at Sitka was the centre, to have a substantial strip or *lisière* of territory upon the mainland, opposite the islands, and extending as far south as the Portland canal. To this contention Great Britain yielded, and the line now under consideration was designed to give to Russia a strip or *lisière* on the mainland which would afford to the Russian-American Company the protection desired.

The purpose of the *lisière* was stated by the Russian negotiators to be—  
‘the establishment of a barrier at which would be stopped once for all to the north as to the west of the coast allotted to our American Company the encroachments of the English agents of the amalgamated Hudson's Bay and North-west English Company, whom a more intimate acquaintance with the country traversed by the Mackenzie river might easily bring, in the course of time, into the neighbourhood of our establishments.’ (B.C., App., p. 53.)

It is more fully stated in the observations of the Russian plenipotentiaries upon the proposal of Sir Charles Bagot in February, 1824, to assign to Russia a strip with the uniform width of 10 marine leagues from the shore, limited on the south by a line



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between 30 and 40 miles north from the northern end of the Portland canal. They then said:—

‘The motive which caused the adoption of the principle of mutual expediency to be proposed, and the most important advantage of this principle, is to prevent the respective establishments on the north-west coast from injuring each other and entering into collision.

‘The English establishments of the Hudson’s Bay and North-west companies have a tendency to advance westward along the 53° and 54° of north latitude.

‘The Russian establishments of the American Company have a tendency to descend southward toward the 55th parallel and beyond, for it should be noted that, if the American Company has not yet made permanent establishments on the mathematical line of the 55th degree, it is nevertheless true that, by virtue of its privilege of 1799, against which privilege no power has ever protested, it is exploiting the hunting and the fishing in these regions, and that it regularly occupies the islands and the neighbouring coasts during the season, which allows it to send its hunters and fishermen there.

‘It was, then, to the mutual advantage of the two empires to assign just limits to this advance on both sides, which, in time, could not fail to cause most unfortunate complications.

‘It was also to their mutual advantage to fix these limits according to natural partitions, which always constitute the most distinct and certain frontiers.

‘For these reasons the plenipotentiaries of Russia have proposed as limits upon the coast of the continent, to the south, Portland channel, the head of which lies about (‘par’) the 56th degree of north latitude, and to the east the chain of mountains which follows at a very short distance the sinuosities of the coast.’ (U.S.C., App., p. 161.)

The reply of Sir Charles Bagot was that the line proposed by him would secure the advantage desired by Russia. He said:—

‘Any argument founded on the consideration of practical advantage to Russia could not fail to have the greatest weight, and the plenipotentiary of His Britannic Majesty did not hesitate to give up, in consequence of this observation of the Russian plenipotentiaries, the line of demarcation which he had first proposed . . . and to offer another which would secure to Russia not only a strip on the continent opposite the southernmost establishment which she possesses on the islands, but also the possession of all the islands and waters in its vicinity, or which are situated between that establishment and the mainland (‘terre ferme’), in short, possession of all that could in future be of any service either to its stability or its prosperity.’ (U.S.C., App., p. 163.)

And he then proposed to include the Prince of Wales island within the Russian line. But Russia insisted upon having her *lisière* run to the Portland canal, saying—

‘That the possession of Prince of Wales island, without a slice (portion) of territory upon the coast situated in front of that island, could be of no utility whatever to Russia. That any establishment formed upon said island, or upon the surrounding islands, would find itself, as it were, flanked (‘tourné’) by the English establishments on the mainland, and completely at the mercy of these latter.’ (U.S.C., App., p. 164.)

England finally yielded to the Russian demand that the *lisière* should extend to the Portland canal.

It was thus the intent of the treaty makers to provide for a strip of Russian territory on the mainland which would protect the trade of the Russian-American Company, from its central post at Sitka, against the competition of the Hudson’s Bay traders, coming from the east. To ascertain what kind of a barrier was intended to furnish that protection, it is necessary only to inquire what the trade was. It was a trade with the Indian tribes who lived around the heads of the inlets, and the subject matter of the trade consisted of the skins of the fur-bearing animals taken in and about the inlets and the streams flowing into them. It is quite incredible that for the



purpose of protecting that Russian trade against competition of the Hudson's Bay Company the treaty makers intended to draw the line which would throw all the natives with whom the trade was conducted, and substantially all the territory which produced the material of the trade, into the Hudson's Bay territory. Instead of a protection to Russian trade with the mainland, that would have been a complete abandonment of it. Instead of excluding the Hudson's Bay agents from those parts of the coast which were frequented by the Russian hunters and fishermen, it would have excluded the Russians, and given a monopoly to the Hudson's Bay Company. The line proposed by Great Britain cuts across some sixteen bays and inlets, leaving upon the Russian side substantially nothing but rocky and inaccessible promontories, and on the British side, including substantially all the harbours, anchorages, habitable shores, river mouths, avenues of access to the interior, hunting grounds and native tribes. It is plain that such a strip of territory, part land and part water, would have furnished no protection to Russian trade, would have interposed no barrier to the extension of Hudson's Bay posts as far as, in the nature of things, they could come, would have completely failed to furnish the natural boundary which both parties intended, and would not, in any respect, have answered the avowed purpose of the *lisière* intended by the treaty.

We are not at liberty to ascribe a meaning to the terms of a treaty which would frustrate the known and proved purpose of the instrument, unless the words used in the instrument are such as to permit no other construction. Whoever asserts a construction which would produce such a result must show not merely that it is a possible construction, but that it is a necessary construction, and that any other is impossible.

The most important and determining question in construing the words of the treaty is the question: in what sense did the treaty makers use the words 'coast' and 'sinuosities of the coast'? The primary boundary provided for in Article III was to be 'the crest of the mountains situated parallel to the coast.' And, by Article IV, when that crest proves to be the distance of more than 10 marine leagues from the ocean, the boundary is to be formed by 'a line parallel to the sinuosities of the coast, and which shall never exceed the distance of 10 marine leagues therefrom.'

In what sense did the treaty makers use the word 'coast'?

Counsel for Great Britain contend that since the 10 marine league line measured from the coast was to be applied only when the mountains proved more than 10 marine leagues from the ocean, the words 'coast' and 'ocean' must be deemed correlative, and the coast intended must be taken to be the line where land and ocean, properly so called, meet; and they say that the word 'ocean' cannot be taken to describe the waters of long and narrow inlets, or fiords, like the Lynn canal and the Taku Inlet, less than 6 miles in width, but must be taken to mean the great body of water which puts a limit to territorial jurisdiction, and they infer that the coast which is co-terminous with the ocean must be the line upon one side of which is the mainland, including its territorial waters, and on the other the full ocean, excluding territorial waters. In other words, the general line or trend of the mainland coast, cutting across the mouths of inlets.

It is, however, impossible to give this meaning to the word 'ocean,' as used in this treaty, because there are stretches along the coast for 300 miles—from Cape Spencer down to the Portland canal, and covering a space from 80 to 100 miles wide—an archipelago of islands, separated from each other and from the mainland by a multitude of narrow and tortuous passages, which do not at all answer to this meaning of the word 'ocean.' If this were the meaning of the word as used in the treaty, the coast line would be outside of the islands, and a line drawn at 10 marine leagues from that coast would give to Russia no territory whatever upon the mainland. It is only by assigning to the word 'ocean' an entirely different meaning, and making it include the narrow passages which are no more and no less ocean than the inlets—that the treaty can be made to provide any *lisière* upon the mainland. In this sense, which is necessary to effect the purpose of the treaty, 'ocean' means the salt water that



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washes the shore of the mainland, and 'coast' means the line where the mainland meets the salt water, however narrow may be the passage, and however distant from the broad expanse of full ocean.

It is further to be observed that the contention of Great Britain completely ignores the provision that the 10-marine-league line, whenever drawn, is to be parallel to the sinuosities of the coast ('parallèle aux sinuosités de la côte'). The general trend of a coast takes no account of sinuosities. The two terms are directly opposed. The meaning of 'general trend' is that sinuosities are ignored, and the meaning of 'following the sinuosities' is that the general trend is departed from whenever the line where the land and water meet depart from it. Counsel for Great Britain were asked upon the argument to lay down on a map a line from which they contended that the 10 marine leagues were to be measured. The line which they presented took no account whatever of the sinuosities of the coast. According to their contention, precisely the same course was followed that would have been followed if those words had been omitted from the treaty. We are not at liberty to omit them, or to refuse to give them effect. The only real effect they can have is to carry the line around the bays and inlets.

If we turn to the maps which were before the negotiators, and with reference to which they used the words of the treaty, and seek to learn their meaning of the word 'coast' by ascertaining what were the mountains which they describe as parallel to the coast, we reach the same result. We know that they had before them, and consulted, Vancouver's chart No. 7 (British Atlas No. 2); Vancouver's chart No. 12 (British Atlas No. 3); the Russian Official Map of 1802 (British Atlas No. 5); Faden's Map of 1823 (British Atlas No. 10), this last being specially relied upon by the British negotiators. Upon every one of these maps there appears a distinct and well defined chain or ridge of mountains, running from and near the head of Portland canal, and northerly along the coast, and in general parallel thereto, and furnishing the means of defining a line of natural boundary as distinctly as the mountain chains which constitute boundaries between countries in other parts of the world, such as the Pyrenees between France and Spain and the Andes between Chile and Peru. These maps embodied the results of both British and of Russian exploration, and they appear to justify the unquestioning confidence of the negotiators in the existence of a mountain crest extending generally parallel to the coast, and capable of defining the proposed boundary line. They clearly present a chain or range, and we know from numerous passages in the written communications which passed during the negotiations, that the negotiators on both sides had in mind a chain or range of mountains, when they referred to mountains as defining the boundary. Thus the Russian negotiators described the proposed boundary which they had proposed, and which is the one adopted in the treaty, as 'the chain of mountains which follow, at a very small distance, the windings of the coast,' and they say that they leave to Great Britain 'all the territory situated behind the chain of mountains referred to previously.' (B.C., App., pp. 71, 72.)

In July, 1824, when Mr. Canning proposed that the line should run along the base of the mountains, Count Lieven represented to him 'that when a chain of mountains is made to serve for the establishment of any boundary whatever, it is always the crest of those mountains that forms the line of demarcation.' (B.C., App., pp. 90, 91.)

On October 20, 1824, the Hudson's Bay Company, through Mr. Pelly, wrote to the Foreign Office insisting that the eastern boundary from the Portland canal northerly should be 'the chain of mountains at a "très petite distance de la côte," but that if the summit of those mountains exceed 10 leagues, the said distance be substituted instead of the mountains,' thus accepting and quoting the Russian language above cited. (B.C., App., p. 110.)

At the time of exchanging the ratifications of the treaty, the Russian representative presented a formal expression of dissatisfaction on the part of Russia at Great Britain's insistence upon the alternative or corrective 10-marine-league line, and Mr. Canning replied that under the treaty of Ghent, between Great Britain and the United



States, 'which likewise fixed a chain of mountains as the frontier between the possessions of the two States,' dispute had arisen because the mountains had been found to deviate from the direction given them on the maps, and he wished to avoid such a dispute. (B.C., App., p. 135.)

When Great Britain finally accepted the Portland canal line, the Russian Ambassador at London wrote to Count Nesselrode at St. Petersburg as follows:—

'The proposition of our court was to make this frontier run along the mountains which follow the windings of the coast to Mount Elias. The English Government fully accepts this line as it is laid off on the maps ('désigné sur les cartes'); but as it thinks that the maps are defective, and that the mountains which are to serve as a frontier might, by leaving the coast beyond the line designated, inclose a considerable extent of territory, it wishes the line claimed by us to be described with more exactness, so as not to cede, in reality, more than our court asks and more than England is disposed to grant.' (B.C., App., p. 84.)

There can be no doubt that the chain of mountains depicted upon all of these maps as running northerly from the head of the Portland channel along the coast to Mount St. Elias was the mountain crest described in the treaty as running parallel to the coast. There are no other mountains on any of the maps which were before the negotiators which answered to the description of the treaty and of the written negotiations.

That chain of mountains upon all the maps runs around the heads of all the bays and inlets. It is substantially parallel to those sinuosities, and it is not parallel to a line which cuts across the inlets.

The negotiators have themselves, however, furnished an explanation of their meaning of the word 'coast,' which leaves that provision of the treaty in no possible doubt. The 10-marine-league line was proposed to the Russian negotiators by Sir Charles Bagot as the measure of the width of the *lisière* at the time when he proposed to fix its southern boundary a short distance north of the Portland canal. He proposed it in these words:—

'Thence extending in the same direction upon the mainland as far as a point 10 marine leagues distant from the coast. From this point the line would follow a northerly northwesterly direction, parallel to the sinuosities of the coast, and always at a distance of 10 marine leagues from the shore.'

The coast, to the sinuosities of which the line was to be drawn parallel, was thus explained as being equivalent to the shore ('rivage'). (B.C., App., p. 71.)

When Mr. Canning was about to assent to the mountain boundary proposed by Russia, the Hudson's Bay Company, which was consulted at every step of the negotiations by Mr. Canning, understood that the proposed line 'parallel to the sinuosities of the coast' was equivalent to 'parallel to the sinuosities of the shore,' for in subsequently advising Mr. Canning upon the Russian proposal, Mr. Pelly says that 'those mountains represented in the charts as closely bordering on the sea, and described by the Russians as a 'très petite distance,' may really be at a very considerable distance from the coast, and to provide for which case the distance ought to be limited, as Sir Charles Bagot proposed, to a few leagues, say not exceeding ten, from the shores.' (B.C., App., p. 80.)

When the Russians accepted the 10-marine-league line parallel to the sinuosities of the coast, as proposed by Sir Charles Bagot, as an alternative line to be applied in case the mountain chain proved to run off into the interior, and when they signed the treaty with the provision for that line, there had never been the slightest intimation that the word 'coast' was used in any other sense than that ascribed to it by Sir Charles Bagot in his original proposal of the line, that is to say, as equivalent to shore.

That the Russians understood that the word 'coast' was used in this sense appears clearly from the fact that while the draft treaty proposed by Mr. Canning, and inclosed in his letter of the 12th July, 1824, contained the same words that are used



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in the treaty, that the line should be 'carried along that coast in a direction parallel to its windings.' (B.C., App., p. 87). Count Lieven transmits the draft to Count Nesselrode in a letter which describes this line as running along the base of the mountains which follow the sinuosities of the shore ('les sinuosités du rivage'). B.C., App., pp. 88, 89.)

That the negotiators understood that the shore which they were describing was one a line parallel to which would give Russia the heads of all the inlets is apparent from Sir Charles Bagot's description of the effect of his offer of the 10-marine-league line, already cited, in which he declares that it would give to Russia all the islands and the waters adjacent or which are to be found between the Russian establishment and the mainland (B.C., App., p. 73), and by the letter of the Hudson's Bay Company to Mr. Canning, in which Mr. Pelly says that he is at a loss to understand 'why Great Britain should cede to Russia the exclusive right to the islands and the coast from latitude 54° 40' northward to Mount Elias' (B.C., App., p. 51). An arrangement under which substantially all the harbours and ports for trade on the coast were retained by Great Britain certainly would not be a cession of the exclusive right to the coast. If Great Britain was retaining the most valuable part of the coast, it was unknown to the Hudson's Bay Company, upon whose settlements Great Britain based all her claims to territory, which was conducting all the trade that Great Britain was endeavouring to protect, which was most familiar with the country to which the treaty related, most interested in the result, and which was consulted at every step of the negotiations. If Mr. Canning had considered that such was the effect of the proposed arrangement, a prompt explanation of his advisers' mistake would have followed, and a modification of the terms of the treaty in such a way as to make it clear that he was not ceding an exclusive right to the whole coast.

In the face of this clear statement by the Hudson's Bay Company of their understanding that the effect of drawing a line either along the mountains or at 10 marine leagues from the shore would be to 'cede to Russia the exclusive right to the islands and the coast, from latitude 54° 40' northward to Mount Elias,' the absence of any single word in the treaty, or any draft of it, or in any of the negotiations, referring in any way whatever to Great Britain's having the heads of the bays and inlets, or the territory about them, has a special significance, and indicates most clearly that no such idea was entertained by the British negotiators.

It is argued by Counsel for Great Britain that Article VII of the treaty, which gives to the vessels of the two powers reciprocal rights to frequent the inland seas, gulfs, havens, and creeks on the coast mentioned in Article III, shows that Great Britain was the possessor of inland seas, gulfs, havens, and creeks on the coast along which the *lisière* ran; that is, between latitude 54° 40' and latitude 60°. The argument is that Article VII applies exclusively to that part of the coast, and it is to be inferred, therefore, that the reciprocal rights which were granted on the part of Great Britain in that article were rights to inlets, &c., which she had under the treaty in that part of the coast.

But the coast mentioned in Article III is the 'coast of the continent.' It is true the same Article describes the boundary of the *lisière* as being parallel to the coast, but there is no warrant whatever for limiting the reference of Article VII to anything less than the possessions of the two parties upon the coast of the continent—the entire coast mentioned in Article III. If Great Britain had no other possessions upon the coast of the continent in which she could give reciprocal rights to Russia, there would be some force in the argument, but by the terms of this very treaty the coast from the head of the Portland canal to the southern limits of the Russian claims, viz., latitude 54°, was assigned to Great Britain, and upon that stretch of coast, a part of the coast mentioned in Article III, there were numerous gulfs, havens, and creeks. The terms of Article VII are, therefore, entirely satisfied, without assigning the rights granted by Great Britain to any part of the coast north of the head of the Portland canal.



The view that the grant by Great Britain in Article VII was intended to apply, not to the *lisière*, but to the coast to the south of it, is supported by the fact that by the terms of the treaty of 1818 between the United States and Great Britain, those countries acknowledged equal rights, each in the other, to the coast south of  $54^{\circ} 40'$ , and that Article VII of the treaty now under consideration was taken bodily from the treaty of April 5, 1824, between Russia and the United States, which, in the same words, granted reciprocal rights in the possessions of the two parties on 'the north-west coast of America.' The provision of the American treaty could not have been intended to confer upon Russia any rights except below  $54^{\circ} 40'$ , for America had none. The natural inference from the incorporation of this same provision into the British treaty would be that it was intended to give Russia the same rights from the co-tenant of the same coast.

A further examination of the history of Article VII. leaves no doubt that instead of the grant of rights by Great Britain to Russia in that article being intended to apply exclusively to the coast of the *lisière*, it was intended to apply exclusively to the coast below the *lisière*: for the first appearance of the article was in the draft treaty prepared by Mr. Canning, and inclosed by him in his letter to Sir Charles Bagot of July 12, 1824. In that draft Mr. Canning proposed, in Article III, a provision, not that there should be reciprocal rights in regard to the *lisière*, but that Russia should grant to British subjects a perpetual right to navigate and trade along the coast of the *lisière*; while the reciprocal provision for ten years, which now constitutes Article VII, was proposed as Article V of the draft, 'with regard to the other parts of the north-west coast of America' (B.C., App., p. 87). This was after the American treaty of 1824, and Article V of Mr. Canning's draft, providing for reciprocal relations in the other parts of the north-west coast, copied the language of the American treaty. As England had unquestionably no interests in the parts of the north-west coast other than the *lisière*, except south of the *lisière*, the reciprocal provision proposed by Mr. Canning in Article V of his draft applied, so far as it involved a grant of right by Great Britain, solely to the same coast which was effected by the American grant in the treaty of 1824.

Russia refused to grant to British subjects the perpetual right to trade in the *lisière*, but expressed a willingness to give such a right for ten years, and she carried into the treaty of 1825, now under consideration, the reciprocal provision which Mr. Canning proposed as to the other parts of the north-west coast, unchanged except that the words 'other parts' were stricken out; so that the reciprocal clause operated not only to accomplish the original effect of a British grant of rights to Russia below the *lisière* for ten years, but also of a Russian grant to British subjects of rights in the *lisière* for ten years.

There is absolutely no ground for claiming that, in broadening the scope of Mr. Canning's original reciprocal provision so that it would include a grant by Russia in the *lisière*, it was intended to exclude the other parts of the coast, to which solely the provision originally applied.

The maps which we have said furnished an interpretation of the treaty by the parties include—

The Russian Admiralty Chart of 1826 (U.S. Atlas, No. 11); the Russian Admiralty Chart of 1844 (U.S. Atlas, No. 22, British Atlas, No. 15); atlas sent by Sir J. H. Pelly, the Governor of the Hudson's Bay Company, September 13, 1849, to Earl Grey, as part of a statement of the rights as to territory, trade, taxation and government, claimed and exercised by the Hudson's Bay Company, and printed in the Parliamentary Papers of the House of Commons, July 11, 1850 (U.S.C. C., p. 253; British Atlas, No. 19); map reduced by Sir George Simpson, Governor of the Hudson's Bay territories, before a Select Committee of the House of Commons on the affairs of the Hudson's Bay Company, as showing the territory leased by that company from the Russian American Company, and published by order of the House of Commons in 1857 (U.S.C. C., App. pp. 38, 39; British Atlas, No. 21); British Colonial Office manuscript



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map of 1831 (British Atlas, No. 13); British Admiralty Chart of 1856, corrected 1861, 1862 and 1864 (U.S. Atlas, No. 23); British Admiralty Chart of 1876 (U.S. Atlas, No. 38); official map of the Dominion of Canada, showing the extent and situation of its public lands, published by the Canadian Department of the Interior in 1878 (U.S. Atlas, No. 39); map published by the Canadian Department of Railways, 1883 (U.S. Atlas, No. 43); official map of Province of British Columbia published by the Commissioner of Lands and Works, Victoria, 1884 (British Atlas, No. 31); map of the Dominion of Canada, published in 1884 by the Director of the Canadian Geological Survey from surveys made by the Geological Corps, 1842 to 1882 (British Atlas, No. 32); the map published by the United States Coast Survey in 1867, compiled for the Department of State at the time of the purchase of Alaska by the United States (U.S. Atlas, No. 24).

In all of these maps the boundary line is drawn around the heads of the inlets. It is not contended that this boundary line was an accurate location of the true boundary. In the absence of knowledge as to the mountains, it appears to have been drawn on the 10-marine league line, measuring from the heads of the bays and inlets. It precludes no one from saying that the occurrence of a mountain crest within 10 marine leagues of the coast would call for a change of the position of the line. But it is manifest that in every case the line was drawn in accordance with the American theory of what constituted the coast, and not in accordance with the theory now maintained by the Counsel for Great Britain as to what constitutes the coast. According to the construction of the treaty claimed by the British case, the 10-marine-league line should have been drawn across the Lynn canal  $34\frac{1}{2}$  miles from its mouth. In all those maps it is drawn 90 miles away from that point,  $34\frac{1}{2}$  miles above the head of the Lynn canal. It is not contended that the action of any one of the officials making these maps worked an estoppel against his government, but the uniform and continuous adoption and promulgation for sixty years, by all these officers, of the view that the line went around the head of the Lynn canal, without a single map, or paper, or act, or word indicating the existence of any differing view on the part of their governments, certainly does lead to a strong inference that their governments understood the treaty consistently with the maps, and not inconsistently with them.

It would be a strange thing if, six years after the treaty was made, the British Colonial Office recorded the limits of the British possessions in North-west America inconsistently with the views of the British Government; that for fifty years after the making of this treaty of 1825, the British Admiralty should issue the charts which constituted the guide for the vessels of the British navy, putting down upon them the heads of the bays and inlets in Southern Alaska as being Russian waters, if the British Government regarded them as British waters; that the government of British Columbia, the Canadian Department of the Interior, Department of Railroads and Geological Survey, should all be mistaken regarding the construction which the British Government put upon this treaty. It would be a still stranger thing if Mr. Pelly, Governor of the Hudson's Bay Company, who was Mr. Canning's adviser throughout the negotiations of the treaty, and Sir George Simpson, who was the Resident Governor in America, both at the time the treaty was made and at the time the Hudson's Bay Company leased the property from the Russian-American Company, were ignorant of the construction put upon the treaty by the British Government, and, being in charge of the great interests directly affected by that construction, continued the rest of their lives in that ignorance.

It is impossible to resist the conclusion that the construction of the treaty now contended for by Great Britain is an afterthought, never entertained by any officer of the British Government during the lifetime of the makers of the treaty, and originated at least sixty years after the treaty was signed.

The principal feature of Russia's occupation of Alaska was that in 1839 the Russian-American Company, with the express assent of the Russian Government, leased to the Hudson's Bay Company the mainland coast from Cape Spencer to the Portland



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canal, and that this lease was renewed from time to time until the American purchase. The terms of the lease were apt to describe the entire coast, and the maps showing the leased territory, which were furnished to the British Government by Sir. J. H. Pelly in 1849 and Sir George Simpson in 1857, showed that territory to include the heads of the bays and inlets and all the land surrounding them. It is conceded that the British Government knew of the lease, for it was given in settlement of a claim which the British Government was pressing against the Russian Government, the subject of a diplomatic controversy regarding the construction of the treaty of 1825. The knowledge of the territory leased is brought home to the British Government by the last-mentioned maps. If the government of Great Britain considered that the true construction of the treaty gave to that government and therefore to the Hudson's Bay Company, the heads of the inlets and the territory surrounding them, it is quite impossible that, without a word upon that subject, the Hudson's Bay Company should have recognized Russia's title to that very territory by becoming a tenant.

Upon the purchase of Alaska by the United States in 1867, the officers of the United States took formal possession, with appropriate ceremonies, of the territory at the head of the Lynn canal, and the officers of the Hudson's Bay Company surrendered the possession which they had theretofore held as tenants of Russia, and departed, leaving the head of the Lynn canal in the possession of the United States. From that time until the present the United States has retained that possession, and has performed the duties and exercised the powers of sovereignty there.

For certainly more than twenty years after that, there was not a suggestion from the British Government that the possession was not rightful. In the meantime, the naval and military officers of the United States governed the Indians who lived at the heads of the inlets; those Indians were included in the United States census; order was enforced among them, and their misdeeds were punished by the United States; a public school and mission schools were established at the head of the Lynn canal, under the auspices of the United States government; the land laws of the United States were extended over the territory, and mineral claims were located in the territory now in question; the revenue laws of the United States were extended over the territory, and were enforced in the territory in question; foreign vessels were forbidden to unload at Chilkat, and obeyed this prohibition; a post-office was established at the head of the Lynn canal; an astronomical station of the United States' Coast Survey was established there; factories for the canning of salmon were erected and operated by American citizens; and all these operations of government were unaccompanied by any suggestion that the United States was not rightfully there. In the meantime, Great Britain refrained from exercising, or attempting to exercise, any of the functions of government in the neighbourhood of these inlets. The true condition was stated by the Prime Minister of Canada, in the Canadian parliament, on February 16, 1898, when he said:—

‘My honourable friend is aware that, although this is disputed territory, it has been in the possession of the United States ever since they acquired this country from the Russian government in 1867, and, so far as my information goes, I am not aware that any protest has ever been raised by any government against the occupation of Dyea and Skaguay by the United States;’

and when, on March 7, 1898, he said:—

‘The fact remains that, from time immemorial, Dyea was in possession of the Russians, and in 1867 it passed into the hands of the Americans, and it has been held in their hands ever since. Now, I will not recriminate here; this is not the time nor the occasion for doing so, but, so far as I am aware, no protest has ever been entered against the occupation of Dyea by the American authorities, and when the American authorities are in possession of that strip of territory on the sea which has Dyea as its harbour, succeeding the possession of the Russians from time immemorial, it becomes manifest to everybody that at this moment we cannot dispute their possession, and that,



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before their possession can be disputed, the question must be determined by a settlement of the question involved in the treaty.'

It is manifest that the attempt to dispute that possession to which the Prime Minister refers is met by the practical, effective construction of the treaty presented by the long-continued acquiescence of Great Britain in the construction which gave the territory to Russia and the United States, and to which the Prime Minister testifies. Only the clearest case of mistake could warrant a change of construction, after so long a period of acquiescence in the former construction, and no such case has been made out before this tribunal.

(Signed) ELIHU ROOT.  
HENRY CABOT LODGE.  
GEORGE TURNER.

October 20, 1903.

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No. 51.

*Mr. Sifton to the Marquis of Lansdowne.—(Received October 22.)*

ST. STEPHEN'S HOUSE, WESTMINSTER, October 22, 1903.

MY LORD,—Having in other communications inclosed to your Lordship the protocols and records relating to the proceedings of the Alaska boundary tribunal, with the exception of those of the last day's proceedings which will follow, it only remains for me to record my official acknowledgment of the services of those gentlemen with whom I have been associated in this case.

We are much indebted to Sir Robert Finlay for his opening argument, which in dignity, clearness, and mastery of detail was in every respect worthy of the important character of the issues involved.

Sir Edward Carson and Mr. Christopher Robinson fully sustained their high professional reputations, and their presentation of the case of His Majesty's Government was all that could be desired.

In the work of preparing the British case and counter-case, I enjoyed the advantage of the assistance of the Honourable Edward Blake, K.C., whose subsequent withdrawal owing to ill-health was a source of great regret.

I have also to express my appreciation of the efficient manner in which Mr. F. C. Wade, K.C., Mr. L. P. Duff, K.C., and Mr. A. Geoffrion, K.C., of the Canadian Bar, and Mr. S. A. T. Rowlatt and Mr. J. A. Simon of the English Bar, discharged the important duties confided to them. Upon Mr. Wade and Mr. Rowlatt fell the heaviest portion of the labour attending the preparation of the British case and counter-case, rendered most difficult by the shortness of the time allowed by the treaty. I cannot speak too highly of the ability and judgment which was exhibited by both of these gentlemen.

During the preparation of the British case, questions have constantly arisen requiring reference to expert geographers. In this branch of the work I have had the advantage of the services of Mr. W. F. King, chief astronomer of the Department of the Interior of Canada, who brought to his duties scientific knowledge of a high order. Mr. J. J. MacArthur has also given me the benefit of his accurate personal knowledge of the topographic features of the Alaska coast.

In the examination of records and the collection of documents, I have had the assistance of Mr. Joseph Pope, C.M.G. Mr. Pope has for many years made a study of the literature relating to the treaties under consideration by the tribunal, and this fact, added to his experience and literary ability, rendered his services of great value.



3-4 EDWARD VII., A. 1904

It gives me pleasure to recognize the uniform courtesy extended to me by the Honourable F. H. Villiers. My thanks are also due to Captain V. Ferguson of the Intelligence Department, and Mr. E. G. Lister and Mr. P. Somers-Cocks, who have at various times assisted in the work of revising translations, and to Mr. James White, geographer of the Canadian Government, who investigated and examined the many maps which it was necessary to pass under review.

Throughout the whole of the proceedings the counsel and co-operation of Sir John Anderson, of the Colonial Office, has been of the greatest value. I have constantly had occasion to avail myself of his intimate knowledge of the facts bearing upon the questions in controversy, and his knowledge of proceedings in connection with the settlement of international disputes in other cases. I cannot speak too strongly in recognition of the assistance which he has afforded.

Besides these gentlemen whom I have enumerated, I do not overlook the fact that there are others in the public service, both of Great Britain and Canada, who, in various ways, have greatly facilitated the work committed to my charge.

I am, &c.,

(Signed) CLIFFORD SIFTON,  
*His Britannic Majesty's Agent  
before the Alaska Boundary Tribunal.*

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No. 52.

*The Marquis of Lansdowne to Mr. Sifton.*

FOREIGN OFFICE, October 30, 1903.

SIR,—I have to acknowledge the receipt of your letters of the 21st and 22nd instant, inclosing the award, protocols, and other records of the Alaska Boundary Tribunal, and acknowledging the services of the gentlemen associated with you in representing the British case before the tribunal.

I have received the King's commands to signify to you, and to those who have worked with you, His Majesty's approval of the zeal and ability with which you have advocated the interests of the empire in a question of great importance both to this country and the Dominion of Canada.

I have offered to the Attorney and Solicitor-General the best acknowledgments of His Majesty's Government for the manner in which they have argued the British case before the tribunal, and have requested them to thank the junior Counsel of the English Bar for the valuable assistance rendered by them. I will ask you to offer the same acknowledgments on behalf of His Majesty's Government to Mr. C. Robinson, to the Honourable E. Blake, and to the other gentlemen of the Canadian Bar and public service who have taken part in the proceedings.

I shall have pleasure in informing the members of this office, and other public departments mentioned by you, of the terms in which you have acknowledged their assistance.

I am, &c.,

(Signed) LANSDOWNE.